

DRAFT NOTE



TRADE POLICY QUESTIONS
RELATED TO THE INTRODUCTION OF THE
ECCM TARIFF

Prepared for the ECCM Council of Ministers

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Dec. 1969

The term ECCM Tariff is used for the full title
"ECCM Common External Tariff".

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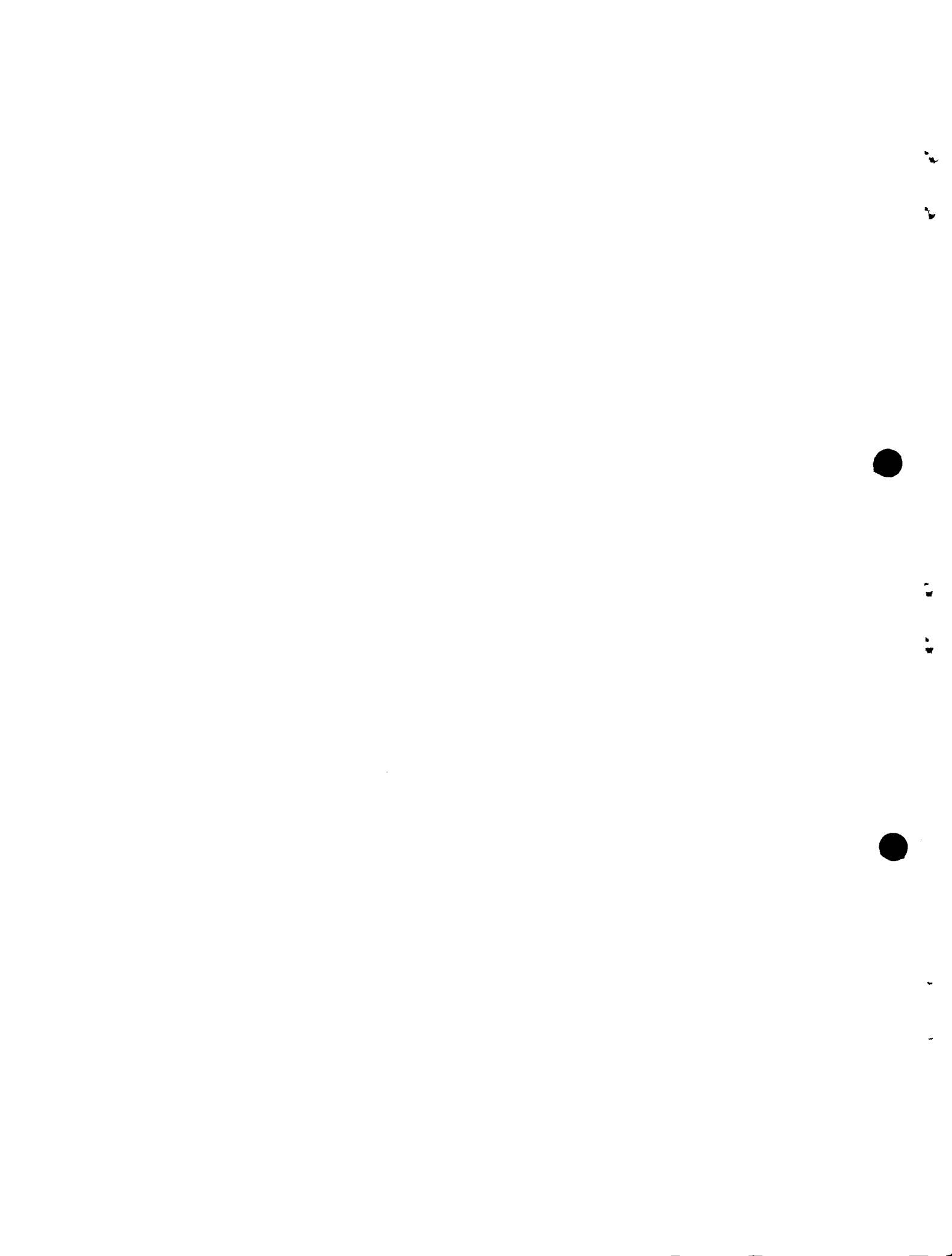


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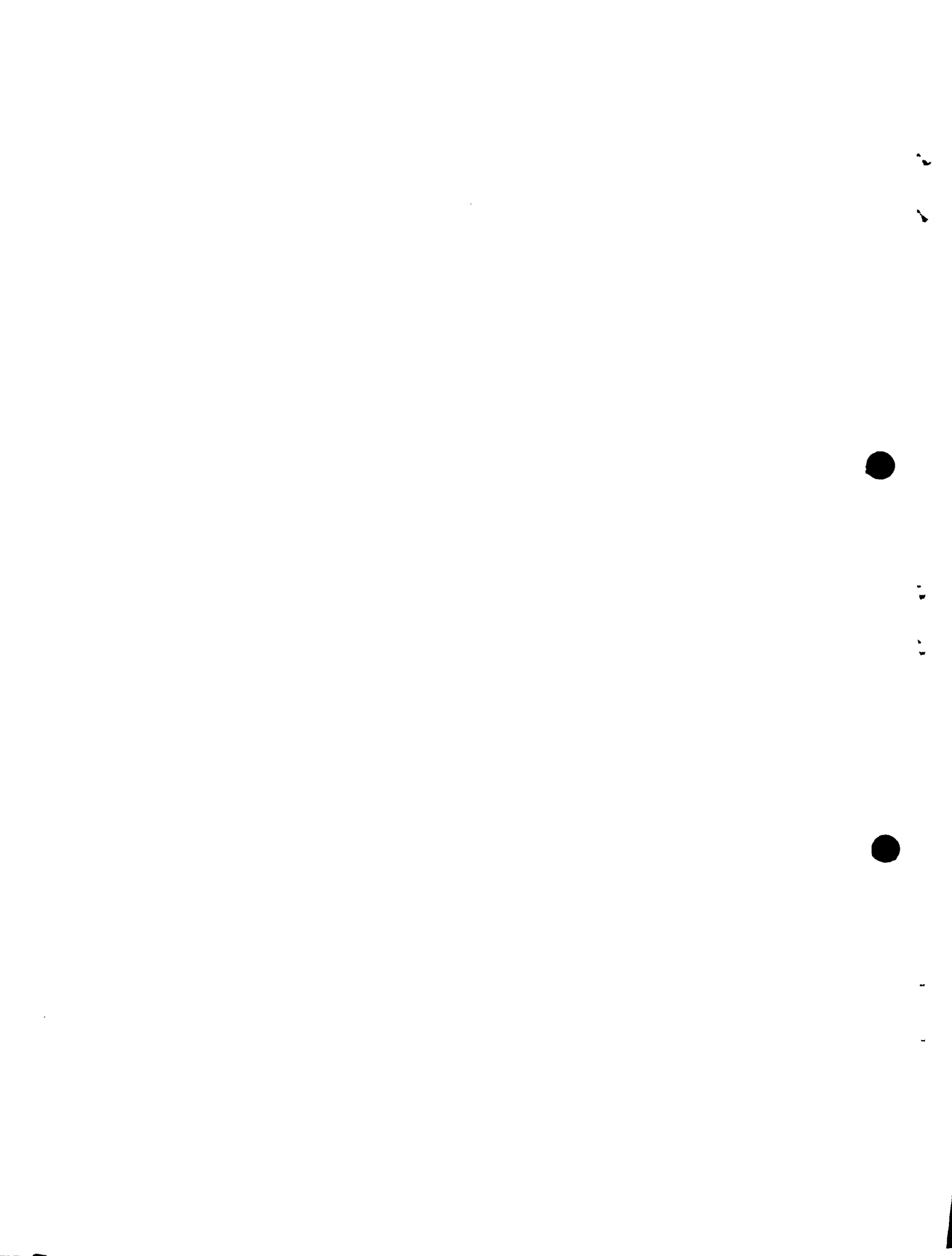
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INTRODUCTION

1. The international obligations concerning customs duties are so much a part of the international life that any change of duties or any tariff reform is likely to affect trade policy obligations. Although a country could theoretically carry out a tariff reform without violating its obligations, it has been generally recognised that this would preclude any useful reform, whether the reason is to introduce a more modern nomenclature or simply to adapt the tariff to a changed economic situation. It is quite obvious that all these considerations also apply in the case of the creation of the ECCM Common External Tariff; the situation is further complicated by the fact that the widely different tariffs of seven territories are replaced by one instrument. It is the aim of this Note to show where the new ECCM Tariff touches on trade policy obligations of the ECCM countries and to indicate measures to ensure its introduction in conformity with international obligations.

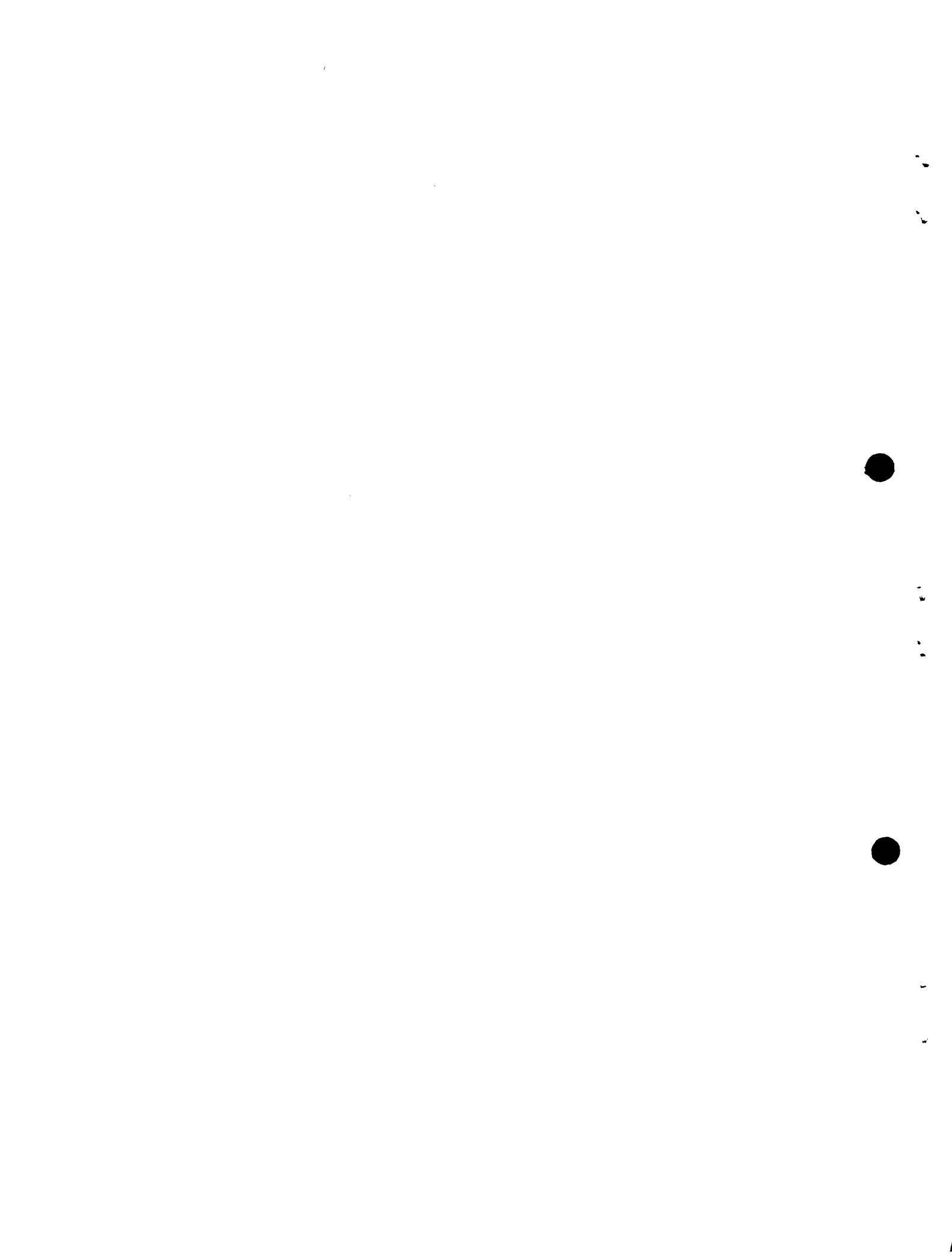
2. In introducing the subject, attention should be drawn to the fact that as long as the countries in question were dependent territories, the trade policy obligations were negotiated and enforced by the mother country on their behalf. It is internationally and generally accepted in the interest of a continuity of the trade policy situation, however, that such obligations - as those accepted by the U.K. or the regional authorities acting under rule on behalf of the territories in question - continue to bind the territories even after they obtained the right to shape their own economic and trade policy affairs. However, this situation in no way prevents the ECCM territories from taking any trade policy actions they might find necessary, including the right to introduce a new customs



tariff and to negotiate new trade agreements. But any such action will have to be carried out, in conformity with the established international rules. Further, consideration must be given to the limited economic potential of the area and the necessity to avoid measures which could conflict with any possible future CARIFTA Policy.

THE ECCM TARIFF AND TRADE POLICY OBLIGATIONS

3. Before entering into the considerations related to the effect of trade policy agreements on the ECCM Tariff the general trade policy situation as it existed before the drafting of the ECCM Tariff shall be outlined briefly. Before the GATT came into force in 1947 these countries were free to grant concessions either on a preferential or a most favoured nation basis. The West Indies - Canada Agreement of 1925 and the Ottawa Agreement of 1932 - which for a long time practically exclusively ruled the trade policy situation of the countries which now form the ECCM - are the most typical examples of preferential arrangements. The idea which was more and more generally accepted that the countries should grant to all imports the same treatment (the so-called most favoured nations clause) affected such areas which mainly operated under preferential arrangements only in so far as imports from non-preferential areas were concerned. The enforcement of the GATT provisions in 1947 (which also included the countries of the region through an undertaking by the U.K.) however, stopped the creation of new preferences and made the most favoured nation treatment the key obligation in international trade relations. GATT also dominated the scene a long time with its efforts to encourage countries to reduce their imports duties. Recently, however, a new type of approach has come into vogue. It consists in the creation of regional economic entities (customs unions and free trade areas) which apply duties on imports from third countries, but free internal



trade from duties and other restrictions. The ECCM itself is an example of such an entity.

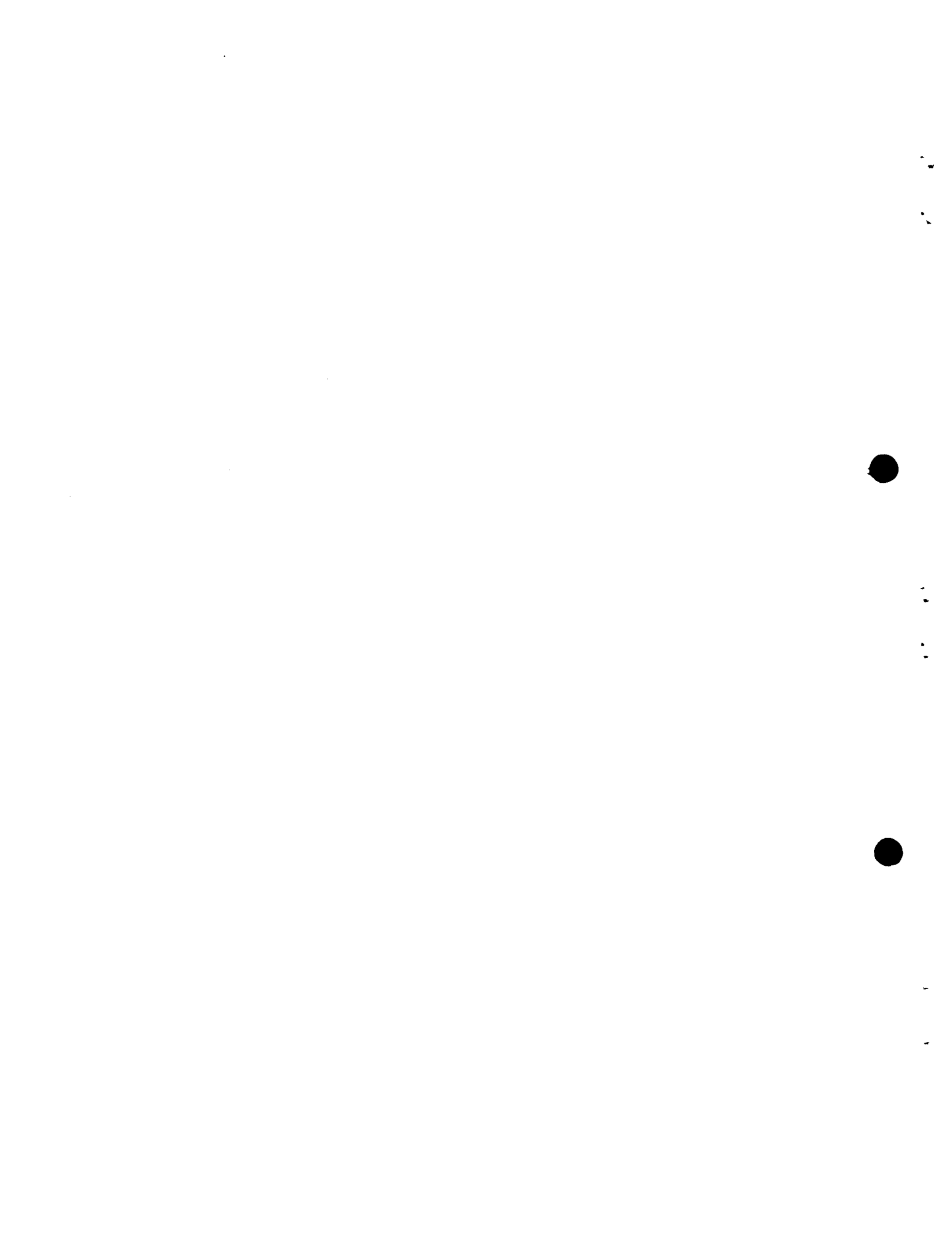
4. In establishing the duties for the ECCM Common External Tariff difficulties arose from the existence of the following heterogeneous obligations affecting the preferential rates:

- (i) not to increase (absolute) preferential margins (GATT)
- (ii) to grant minimum relative preferential margins (West Indies - Canada Agreement)
- (iii) to ensure minimum (absolute) preferential margins (Ottawa).

In order to avoid any trade policy difficulty which could arise from the violation of any of these obligation, it was agreed at the outset that the best solution was to maintain the present preferential margins as far as possible. This decision was, however, not so easy to implement due to the fact that the preferential rates of seven territories had to be converted into a single preferential rate in the new ECCM Tariff ^{1/}. To this comes that the trade policy considerations not to increase or not to reduce preferential margins ranged, regardless of its importance, in second place behind the necessity to set up a tariff in conformity with the economic, development and financial interest of the region. It is felt that the fact that it was nevertheless possible to keep the changes of preferential margins in the new ECCM Tariff to a minimum, and that the increases of margins have on the whole about the same weight as the decreases should - as discussed in detail later - satisfy all trade policy partners.

^{1/} In the absence of a better system this comparison was based as far as was logically justifiable on the arithmetical average of the old rates.

See Annex 1: The ECCM Common External Tariff containing a comparison of the average of the old preferential margins with the new preferential margins. (This Annex was only attached to the original copy of this Note).



THE ECCM AND THE OTTAWA AGREEMENT

5. The Ottawa Agreement of 1932, the provisions of which are of decisive importance for the appreciation of the ECCM Tariff, affects all Commonwealth Countries including those of the ECCM area. It was felt, therefore, that the decision of the trade policy obligations of the individual Commonwealth countries should be introduced by general considerations concerning this Agreement.

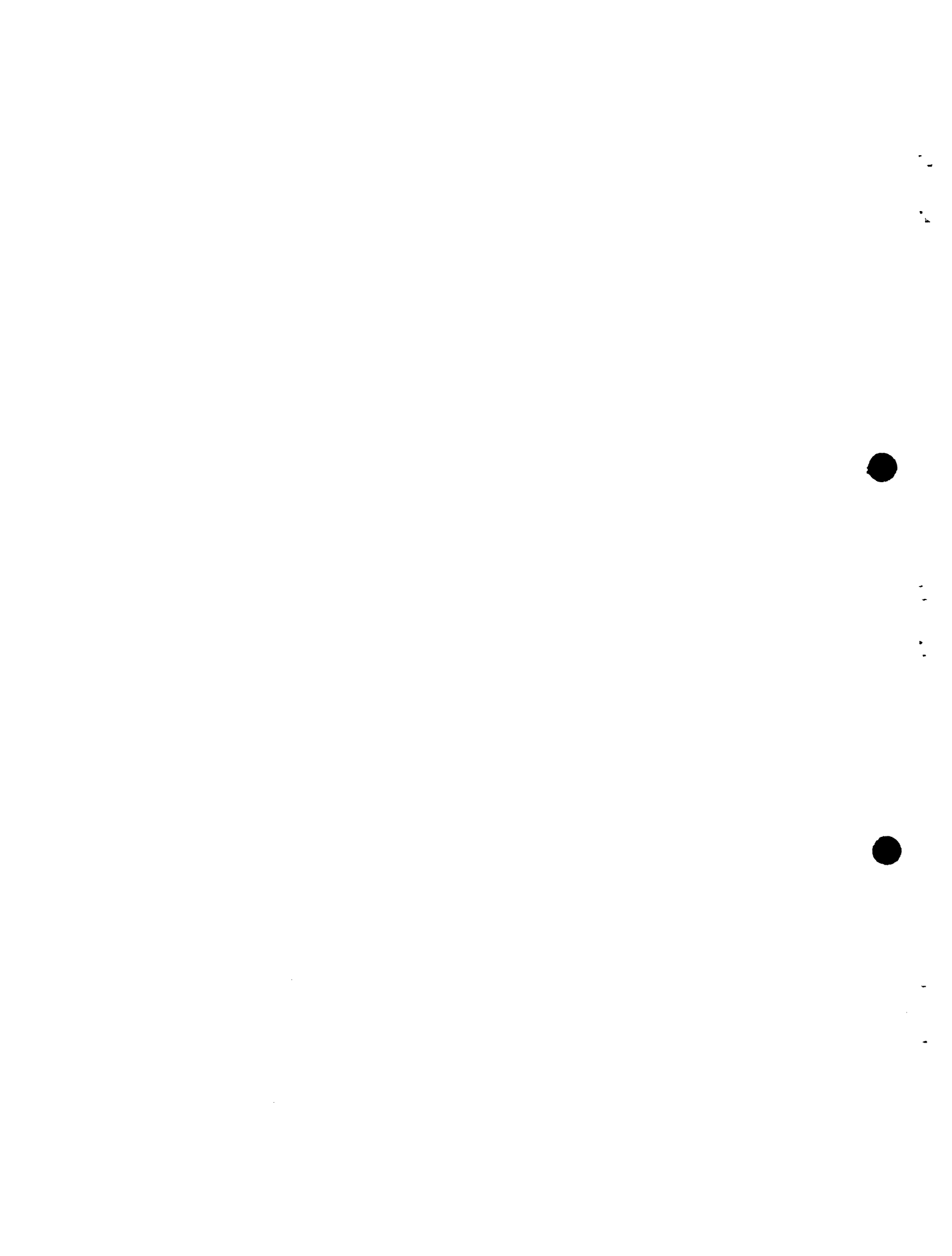
6. In the first instance attention shall be drawn to the fact that it is not as homogeneous a legal instrument as appears from standard citations. In fact it consists of seven distinct Agreements which the U.K. concluded with ^{2/}

Canada
Australia
New Zealand
South Africa
New Foundland
India and
Southern Rhodesia

Three of these Agreements (South Africa, Southern Rhodesia and New Foundland) are for various reasons no longer of practical importance. Pakistan on the other hand which separated itself in August 1947 from India visibly feels bound by the Ottawa obligations. The situation is also complicated by the fact that these Agreements although in principle very similar, differ in detail. To facilitate the discussion of the questions involved, the wording of the Agreement with Canada which is at the same time the most elaborate and the most typical Agreement is attached to this Note ^{3/} so as to serve as a basis and illustration for the further considerations.

^{3/} See Annex 2; U.K. - Canada Agreement, within the Ottawa Agreement of 1932.

^{2/} The countries are given in the same order as in the official publication "Imperial Economic Conference of Ottawa 1932" (London, Stationery Office 4174, 1932). The common date of signature is the 20 August 1932.



7. The main provisions of the various Ottawa Agreements are: the U.K. undertook in relation to each of the seven Commonwealth Partners to continue to grant them duty-free import treatment of most of their goods (Article IC.A). The U.K., whose intention was to introduce duties on imports from non-preferential areas, even promised to introduce for certain products minimum general duties. The Commonwealth Countries in relation to the U.K. undertook what may be described as a binding of most preferential margins ^{4/}. It should be noted that this general obligation refers to the absolute margin of preference; that means that if this margin was 5% (15% general rate, 10% preferential rate) it must at least remain 5% whatever other duties may be introduced.
8. The non-self-governing territories, including those which now form the ECCM, were not parties to the Ottawa Agreement. The rights and obligations of countries which in 1932 were non-self-governing in relation with the Commonwealth Partners of the Ottawa Agreement emanates only indirectly from the Ottawa Agreement. The U.K. undertook (with exceptions

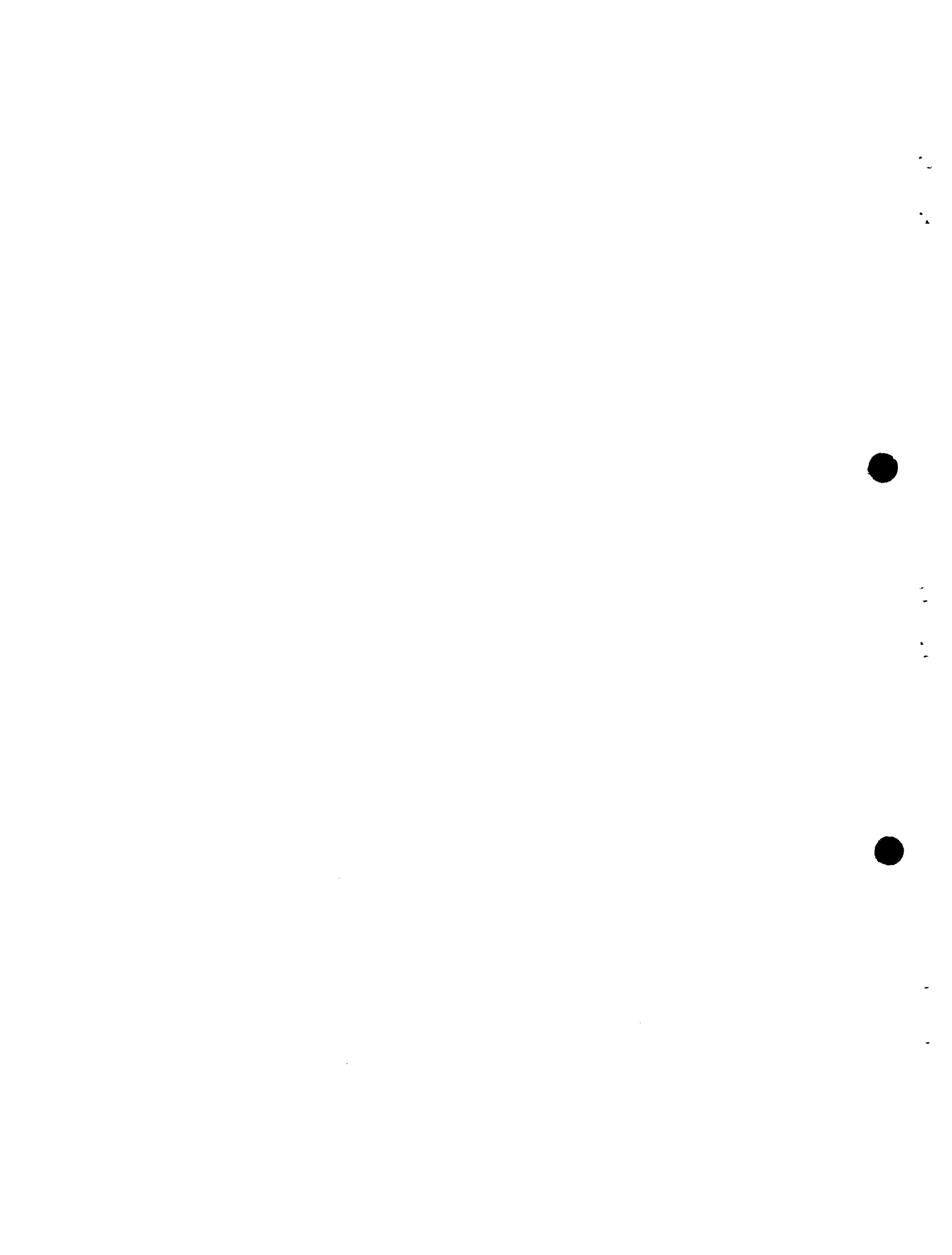
4/ These are some details:

Canada: Preferential margins (some of them listed) are bound (Art. 9)

Australia: Preferential margins are fixed (15%, 17.5% and 20%) and bound (Art. 8)

New Zealand: Preferential margins bound, those higher than 20% can, however, be reduced to 20% (Art. 10)

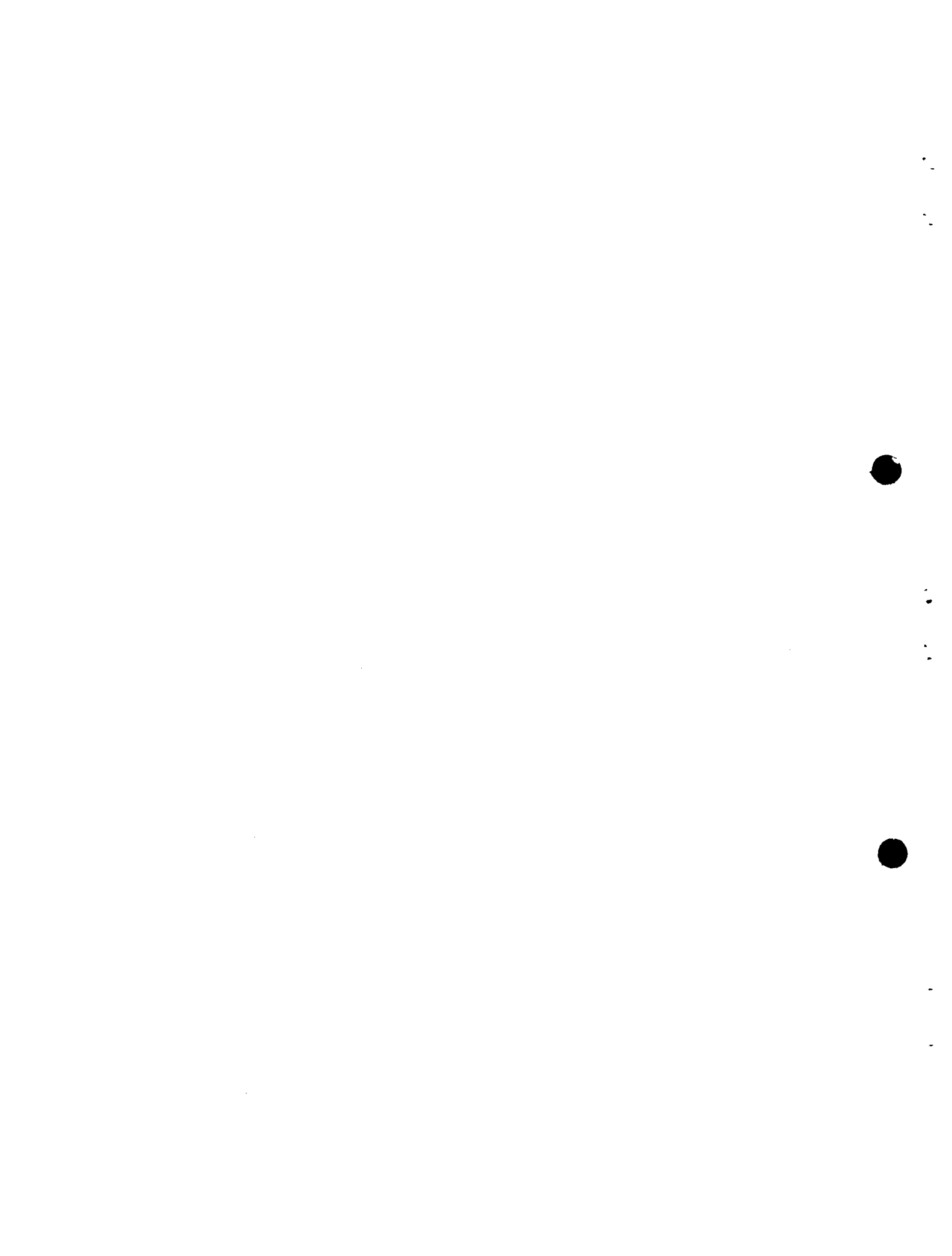
India: More or less generally a preferential margin of 10% is bound (Art. 10).



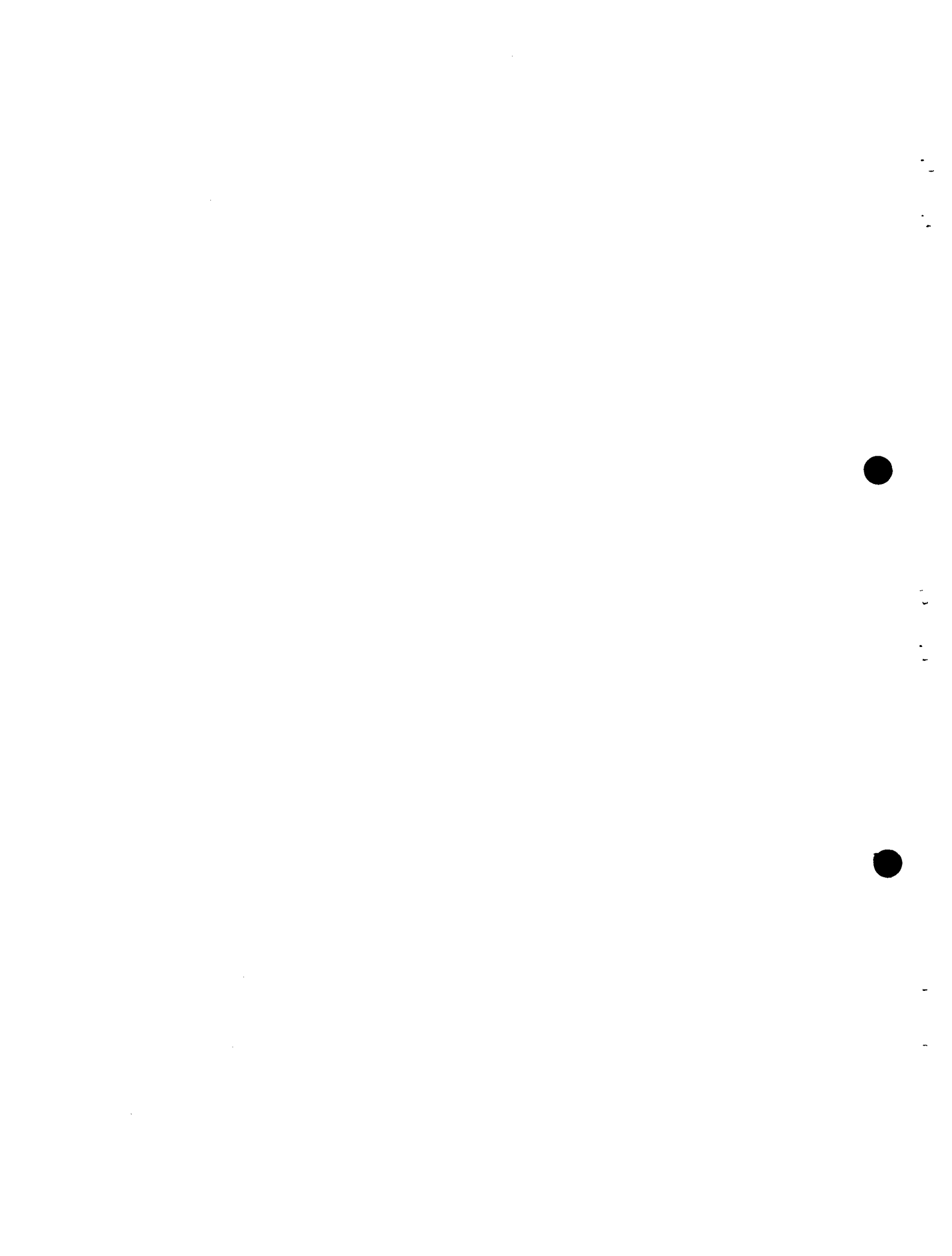
recorded in the Agreement) to ensure that the Colonies accord to the Commonwealth Partners to the Agreement "any preference which may be accorded to any other part of the British Empire" (e.g. Art. 8 of the Ottawa Agreement with Canada, (See Annex 1) ^{5/} The Commonwealth Partners to the Ottawa Agreement accorded to these Colonies to grant "any preferences for the time being accorded to the U.K." (e.g. Art. 19, C.A.). This obligation is specified inter alia in the case of each Agreement by a list of preferential margins for numerous items, probably those which were mainly traded with that area. Canada, Australia, New Zealand, South Africa, New Foundland and India further-more reserved the right to withhold preferences in the case of missing reciprocity (e.g. Art. 19 C.A.).

9. The considerations show clearly that the rights and obligations stipulated in the Ottawa Agreements do not create a legal obligation for the relation of the dependant territories (1) with the U.K. and (2) with other U.K. dependencies. This fact can be described almost as a constitutional accident since it was the visible and successful intention of the Ottawa Agreements to create a new economic and political orbit in which the relation with the colonies was an integral part. This relation with the Colonies would have taken the form of an Agreement had they been in a legal position to accept obligations in their own name. The fact that they could not enter into trade policy obligations in their own name was accepted by the Commonwealth Partners to the Ottawa Agreement as a natural consequence of their constitutional position. It does not seem, possible however, to argue that a

^{5/} For certain items the parties to the Agreement did not satisfy themselves with the general indication that all preferential margins in force on the base date ought not to be increased but added a list of preferential margins for items of particular interest. The special obligation which the U.K. undertook on behalf of the Leeward and Windward Islands are shown in Annex 3.



relation which at the time of the Ottawa Agreement was exclusively ruled by internal legislation and administrative instructions creates an international obligation for the relation of those countries which since 1932 became independent. It seems therefore that this again leads to the irrefutable conclusion that the relation of the non-self-governing territories which acceded to economic independence (like 6 of the EECM countries) amongst them, and their relation with the U.K. is governed - in so far as they grant preferential rights - by the provisions of the Ottawa Agreement de facto and not de jure.



THE ECCM AND THE WEST INDIES-CANADA TRADE AGREEMENT OF 1925

10. The second preferential Agreement which affects the ECCM region is the West Indies-Canada Trade Agreement of 6 July 1925. Although this Agreement links the area only to one country, its theoretical aspects shall be discussed in connection with the considerations concerning the Ottawa Agreement, of which it became a part, in that it is explicitly sanctioned in paragraph 20 of the Canadian part of that Agreement.^{6/}
11. The Agreement was negotiated in so far as the territories of the ECCM are concerned, by the Government of Canada on one side and by officials from the Leeward and Windward Islands on the other side. It was ratified by the Canadian Parliament and approved for the islands by the Secretary of State for the Colonies. It is worthwhile noting, however, that it not only comprises the ECCM countries but also all other CARIFTA countries as well as the Bahamas, Bermuda, and British Honduras.
12. The Agreement obliges Canada to grant to the countries in question preferential rates which are half the general rates, while the preferential advantages offered by the partner territories are all lower; ^{7/} in the case of the Leeward and Windward Islands one-third. ^{8/} It is worthwhile noting that this obligation to grant preferential advantages is expressed in relative figures and therefore differs on this point from the Ottawa Agreement where the obligation not to increase preferential margins refers to absolute figures. In addition to this general obligation each partner undertook to grant minimum preferential margins for a limited number of listed items.

^{6/} See Annex 2.

^{7/} Jamaica and Bahamas (25%); British Honduras (33 1/3%); Barbados, Guyana, Trinidad and Tobago (50%).

^{8/} The relevant wording of Article 4 of the 1925 Agreement reads ... ".... the duties on all goods of Canada shall at any time be not more than sixty-six and two-thirds per cent." ,



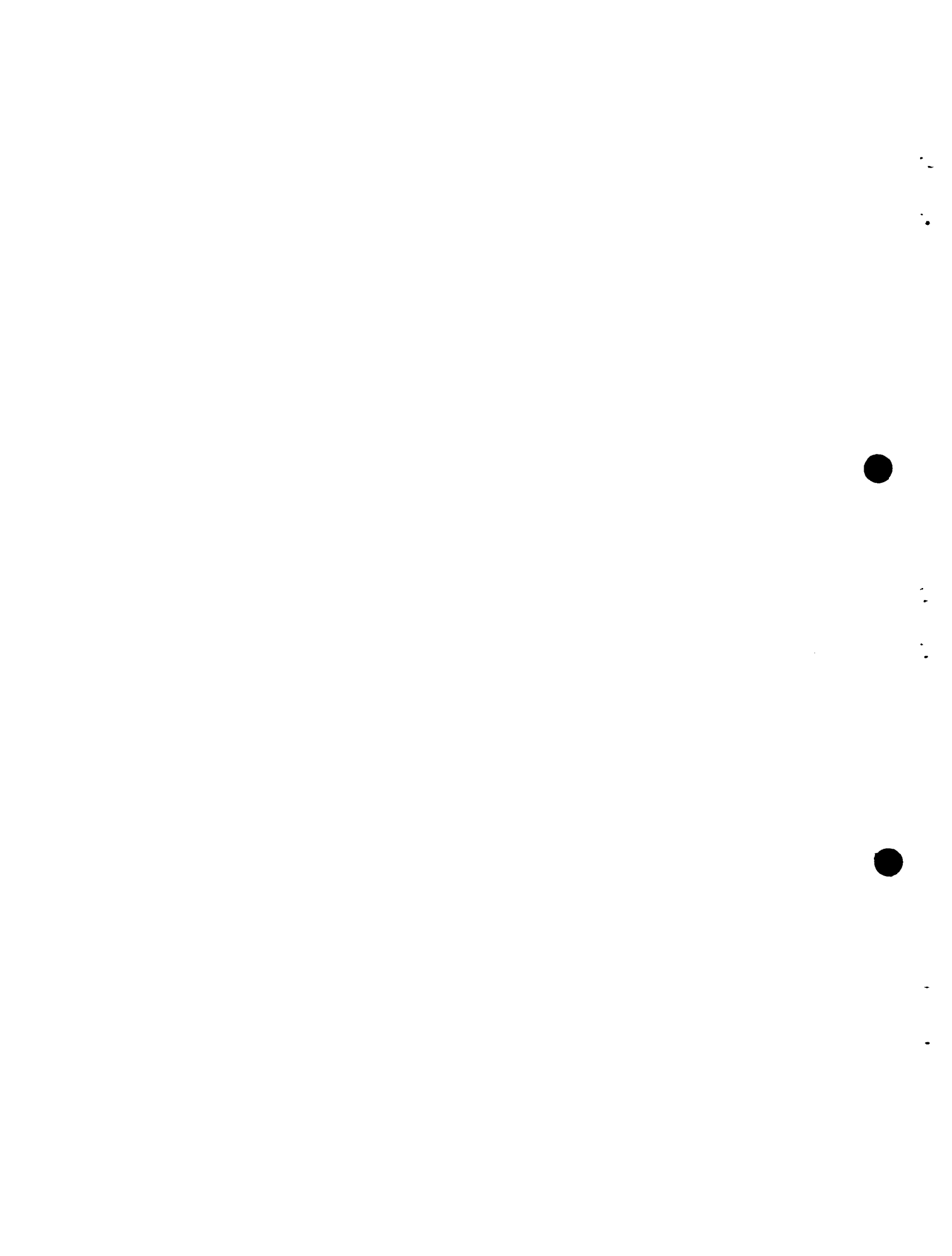
13. Although the Agreement still binds the partners and there is no fault with the clarity of its provisions, a strong feeling always prevailed that it should be re-negotiated. This view found its clearest expression in the Ottawa Protocol of 8 July 1966 which resulted from discussions between Canada and the Commonwealth Caribbean countries; this protocol records agreement among all participants "to examine the Canada-West Indies Trade Agreement in detail with a view to its further amendment or negotiation". The reasons for the feeling are numerous; apart from the necessity specifically indicated in the Protocol to take into consideration the eroding effect which the Kennedy Round had on preferential margins, they are mainly:

- (i) Adaptation to the new political situation;
- (ii) Specialisation if possible, to the CARIFTA area;
- (iii) Adaptation to the changed economic situation; and
- (iv) Adaptation to the changed trade policy situation.

The Canadian Government has since often repeated its readiness to discuss the trade policy situation but had also indicated that the initiative must come from the area.

RECIPROCITY REQUIREMENT FOR PREFERENTIAL RATES

14. Before entering into considerations about the effect of the various preferential rights and obligations on the ECCM Tariff, reference should be made to the decision the ECCM took in conformity with CARIFTA to extend preferential rights only to countries which grant reciprocity. This decision to require reciprocity will, due to its importance for the future trade relation of this area, have to be studied carefully if it is to be a useful basis for the trade policy relation of this area, and still more if it shall become the basis of such important trade policy decisions as to re-negotiate or even terminate a trade agreement. One point must be stressed in this connection, however, namely that any Trade Agreement contains provisions concerning its termination which can be invoked without obliging the partner who wishes to terminate the Agreement to give its reasons for its decision. In that connection the question of receiving or not receiving preferential reciprocity is only one of many possible motives for such action.



15. For permitting a clear discussion on the question of reciprocity, a question to which reference will be made at various parts of this Note, it is necessary to agree on the meaning of this term. It may best be explained by a simple example. Country A and country B have a law which frees imports of a certain product of the other country (e.g. typewriters) from duty. This is legal reciprocity. If both countries export to the other country the same amount of typewriters and therefore both get and receive the same advantage, this is undoubtedly material reciprocity. It should be remarked, however, that the notion of material reciprocity is not very favoured in international relations. The reason is the arbitrary moment which is inevitably inherent in any attempt to measure the relevant economic factors. In the case of a mutual preferential treatment of countries the question may arise which advantages should be included and how they should be calculated.
16. The fact that legal and material reciprocity do occasionally but not always coincide may be seen from the following table ^{9a/} which contains countries which grant each other legally full preferential treatment.

TABLE

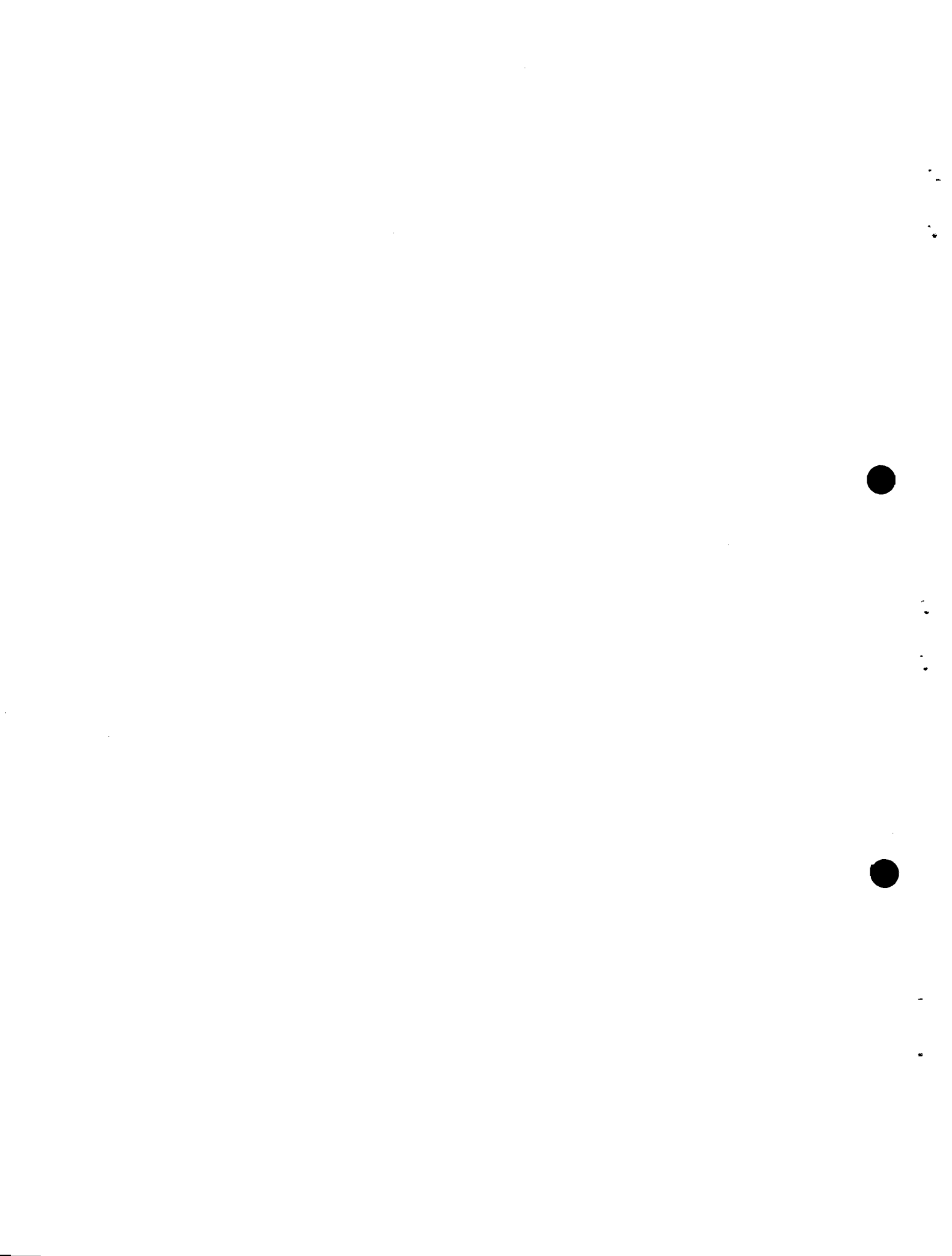
Trade with countries which enjoy preferential rates in Trinidad & Tobago ^{9/}
(in Million W.I. dollars)

Country	Imports from	Exports to	Special preferential advantages granted to TT
U.K.	126	100	Many
Canada	35	41	Some
New Zealand	9	0	None
Australia	6	0	"
Hong Kong	4	0	"
India	2	0	"
Br. Africa	2	2	"
Other ^{10/}	1	2	"

^{9a/} This table will be replaced by a table related to the ECCM area.

^{9/} The figures are based on the trade of 1968 (Overseas Trade, Jan.1969).

^{10/} According to footnote in the relevant table of the publications (Overseas Trade, Jan. 1969), the "Other" countries comprise Malaya, Singapore, Pakistan, Ceylon, Cyprus, Malta, Tanzania, Zambia, Kenya, Uganda and the Dependence of Commonwealth Countries.

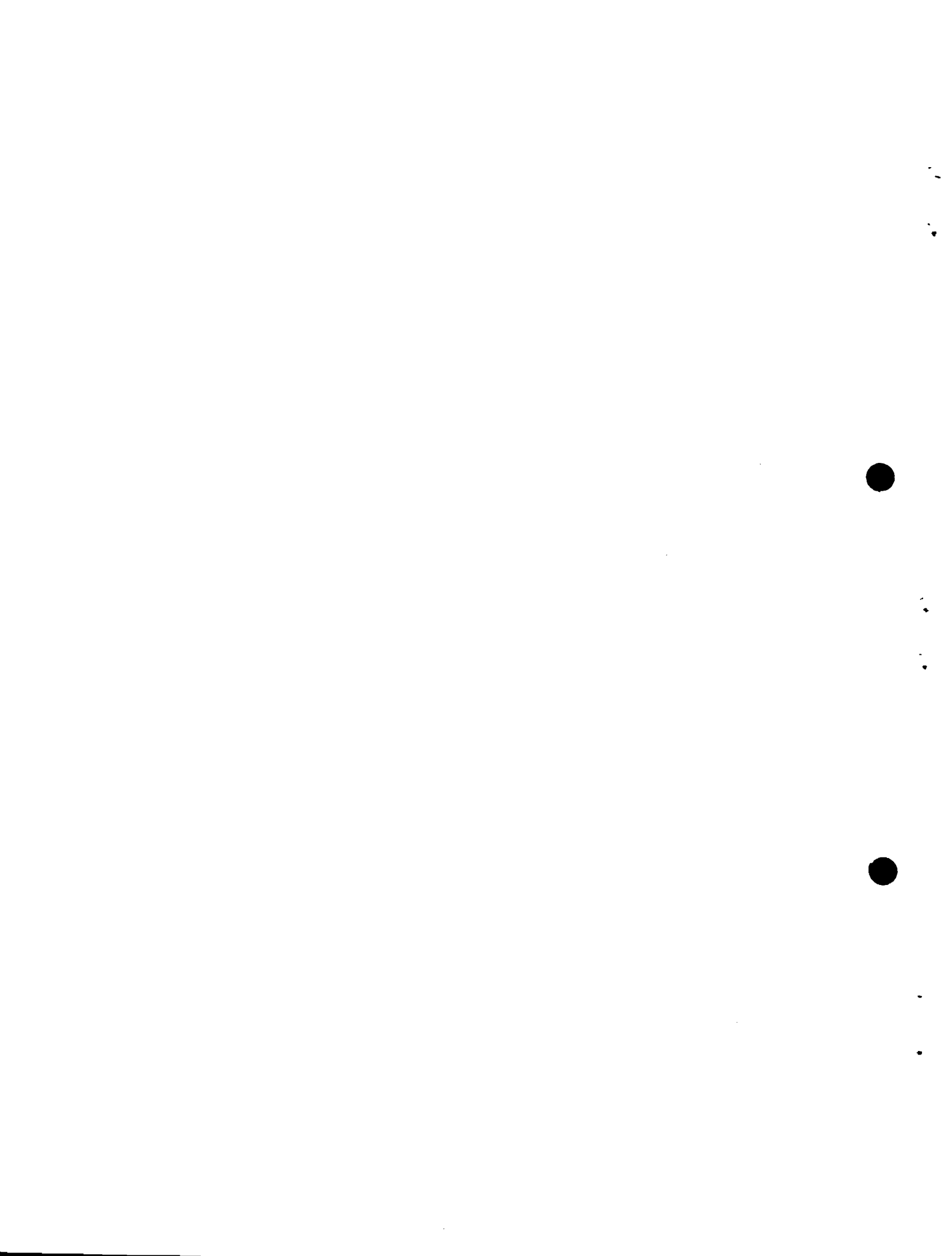


THE ECCM TARIFF AND THE U.K.

17. The question to be accorded priority in connection with the introduction of the ECCM tariff is the relation with the U.K. due to the important political and economic ties of this country with the ECCM region. In substance, it will be important to stress that the ECCM Common External Tariff has been prepared in such a way as to ensure a smooth continuation of the present trade policy situation and in particular also to conform to the spirit of the Ottawa provisions and not to increase preferential margins. Of course, the fact that the new Tariff is a combination of various tariffs made it inevitable that some preferential margins have been changed. But decreases of margins for some commodities have on the whole to be compensated by increases for others. On one point only is the preferential situation different in principle. In the new External Tariff, goods required for development purposes are duty-free regardless of their origin or province. Although this may seem a restriction of preferential margin it has to be considered that such items could under special tax incentive provisions practically always be imported duty-free from all sources.
18. It has been mentioned that the trade policy relations of the U.K. with the ECCM (and vice versa) are not based on a legally binding international instrument. It has also to be mentioned, however, that naturally the trade policy relations of these countries continued de facto to be based on the previous Ottawa status.^{11/} In practice this consideration will be of little importance due to the fact that there seems no interest to change this situation. The ECCM area appreciates the direct and indirect assistance its economies receive from the U.K., and the U.K. is visibly prepared to assist this area in its efforts to achieve viability.^{12/} This leaves only room for the suggestion to bring the legal side of the situation in conformity with the de facto positions.

^{11/} See paragraph 9 of this Note.

^{12/} See Annex 9 (provisional attempt to measure the material reciprocity in the case of the relation ECCM-UK).



19. Attention should be drawn to the fact that any trade policy contact, with the U.K. would also have to include considerations concerning the countries which are still U.K. dependencies; this includes countries which have not yet achieved the stage of full or at least economic and trade policy independence. This may be important for the ECCM countries in the case of territories with a similar pattern of production, or still more, in the case of Hong Kong due to its importance in the world trade and its interest in commercial relation with the ECCM (and of course the CARIFTA region).

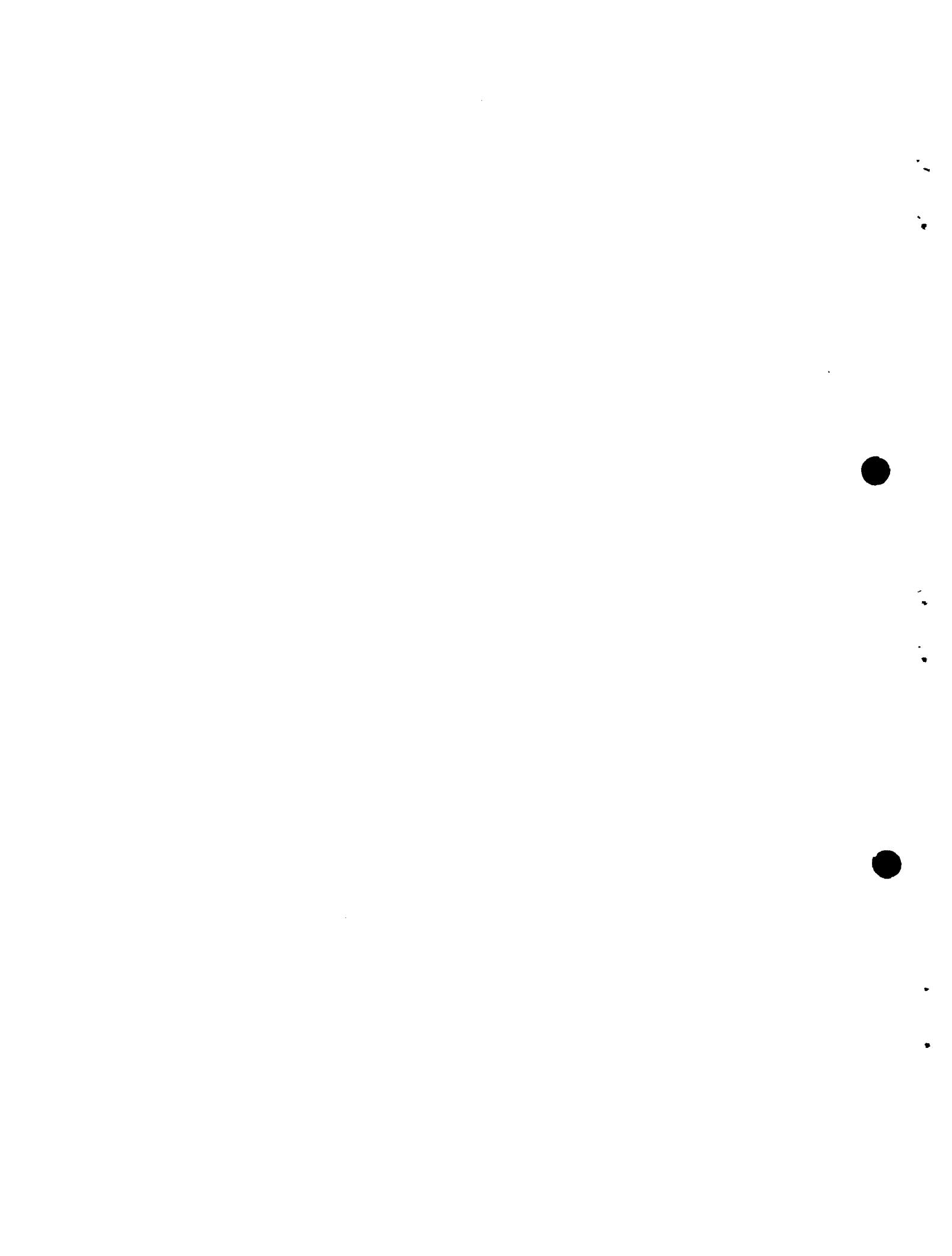
THE ECCM TARIFF AND CANADA

20. In the case of Canada, as in the case of the U.K., there is no doubt that the balance of the legal reciprocity is in favour of the ECCM countries due to the fact already mentioned that Canada grants preferential rates 50% lower than the general rates while the preferential advantage granted by the ECCM Countries is only 33 1/3%. The balance of the preferential advantages granted and received on trade (material reciprocity), however, inevitably must be less favourable for the ECCM in the case of Canada than in the case of the U.K. ^{13/} due to the fact that Canada (with the exception of a certain semi-governmental assistance granted to West Indian sugar exports) does not grant special advantages.
21. On the basis of the documents made available, it can easily be proved ^{14/} that the ECCM Tariff conforms to the greatest possible degree with the provisions of the West Indies-Canada Agreement, ^{15/} in particular the obligation that the preferential rates should not be higher than 2/3 of the general rates. This should make it

^{13/} See Annex 5, Considerations concerning the material reciprocity in the case of the relations ECCM-Canada.

^{14/} See footnote 1 of this Note.

^{15/} It should be remarked that this is more so in the case of Canada than of the U.K. due to the fact that the introduction of a 0/0% duty is no breach of the West Indies-Canada Agreement since mathematically the difference between the general and preferential rate also in such a case remains 1/3. (Disregarding the questions of a possibly superimposed obligation under the Ottawa Agreement.)



possible to introduce this new tariff with no criticism from the Canadian side. However, the possible imbalance of the advantages given and received may raise the wish on the side of the ECCM to make use of the Canadian offer, so often repeated, to enter into trade discussions with Canada with a view not only of obtaining a more balanced Agreement, but also to replace the old Agreement made under politically different conditions by a new arrangement.

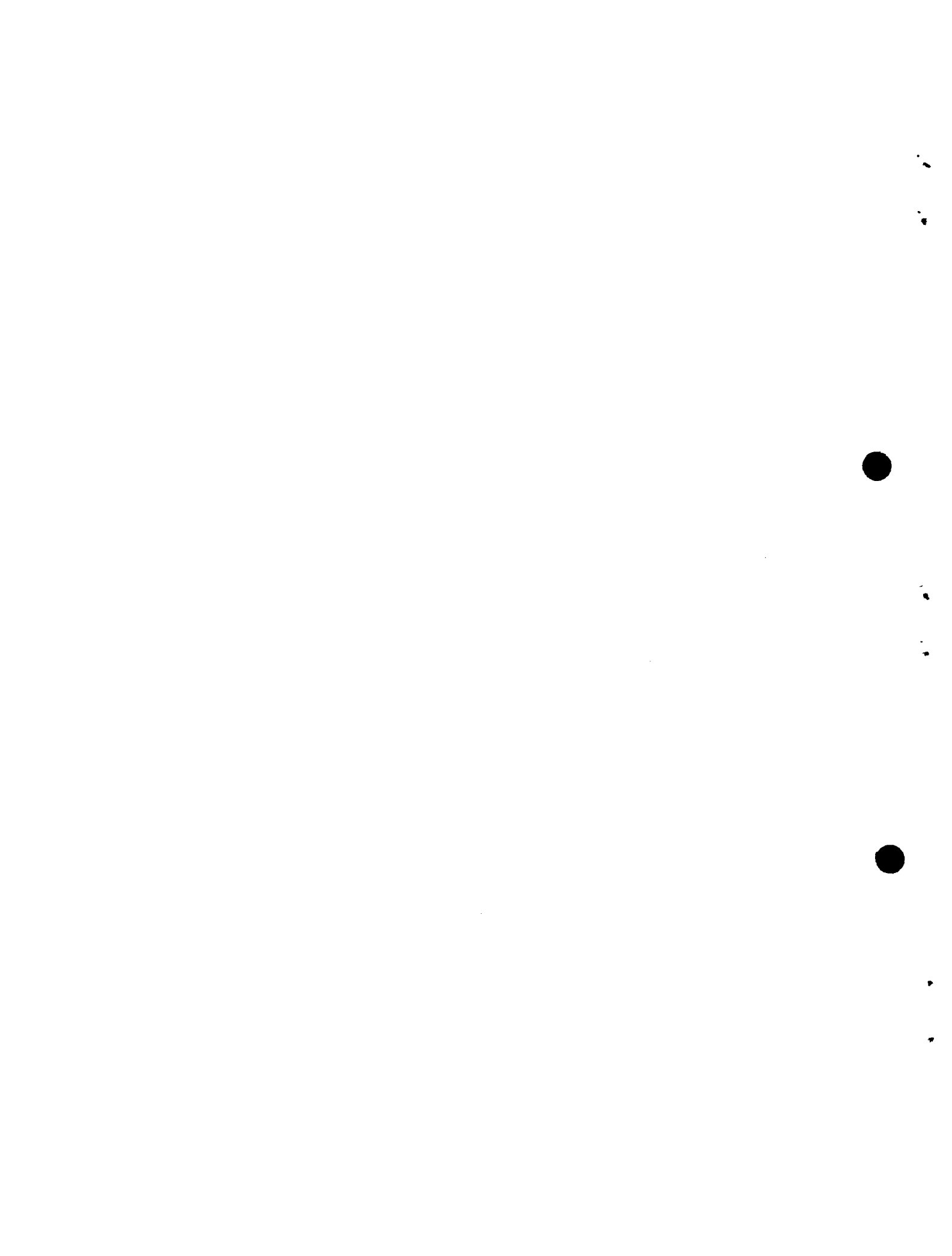
22. To this suggestion should be added, however, that the economic ties with Canada are so strong that under no condition should this relation be put in danger. Even more than in the case of the relation with other countries, the relation of Canada with the CARIFTA has to be respected so that no trade policy action should be undertaken before the common CARIFTA trade policy line has been established.

ECCM TARIFF AND AUSTRALIA

23. The trade policy relation of Australia with this region is probably the most difficult to analyse. While the ECCM countries apply the preferential rates provided for U.K. imports to all imports from Australia, in conformity with the U.K. - Australian part of the Ottawa Agreement, the ECCM countries do not get the same treatment in Australia. Occasionally it was mentioned that Australia had stated that it was prevented from granting full preferential rights to this region under the GATT obligation not to extend preferential rates beyond those applied on the base date established by GATT (1947), since it had not granted preferential rates to this region on or before that date for the simple reason that there were no imports. ^{16/} If this statement was really made it is not on the records of GATT nor did it take the form of any sort of agreement. ^{16a/} In any case it would not have been acceptable to GATT the relevant obligations

^{16/} It is known that a similar measure was taken by Australia in 1947 against imports from New Zealand. This case has been solved by a "List Agreement" in which New Zealand requested and got preferential concessions on certain goods of interest to its trade.

^{16a/} Will be checked in GATT in December 1969.



of which undoubtedly only envisage the legal and not the factual situation. Whatever the motivation was, however, the visible fact remains that the ECCM countries are not listed in the Australian tariff under the areas which have unlimited access to preferential rates.

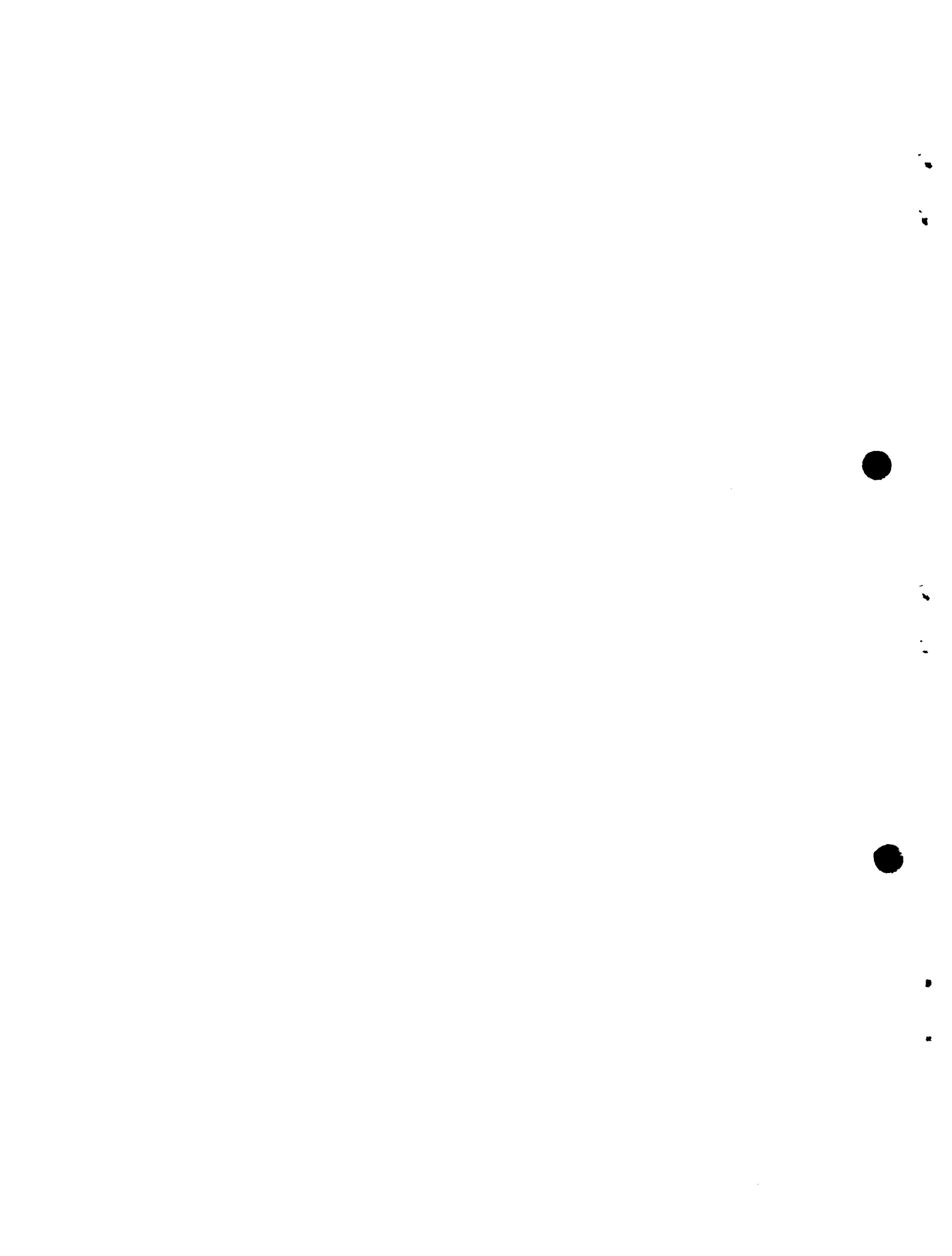
24. The Australian Government stresses, however, that the Australian Tariff provides special reduced rates (often identical with the preferential rates) for "Declared Preference Countries" which comprise the Leeward and the Windward Islands for such selected goods as for example spices and certain tropical fruits. ^{17/} The concessions, it is alleged, cover more items than the region can export at present. Australia also points at its newly introduced provisions (1968) under which it grants developing countries (the ECCM countries are listed as possible beneficiaries in this connection) preferential rates for a considerable amount of imports. This system which consists in preferential rates attributed in the form of tariff quotas to developing countries has found the unanimous approval of GATT. It is felt, however, that due to its exclusively unilateral application it cannot enter the consideration concerning the bilateral trade policy relations existing between the ECCM countries and Australia.

TRADE POLICY RELATION WITH THE OTHER COMMONWEALTH COUNTRIES

25. The relation of the ECCM countries with those Commonwealth countries which were Parties to the Ottawa Agreement are of a special importance for the ECCM region, as this Agreement stipulates explicitly the rights and obligations of the "non-self-governing-territories" which comprised the countries which now form the ECCM. Apart from Canada and Australia, which have been discussed separately, practically only India and New Zealand and possibly Pakistan remain to be considered. ^{18/} It has already been mentioned that under the

^{17/} An example of interest to the region are the duties on Nutmeg and Mace: 12.5% general, 0% preferential, 0% DPC countries.

^{18/} See paragraph 6 of this Note.

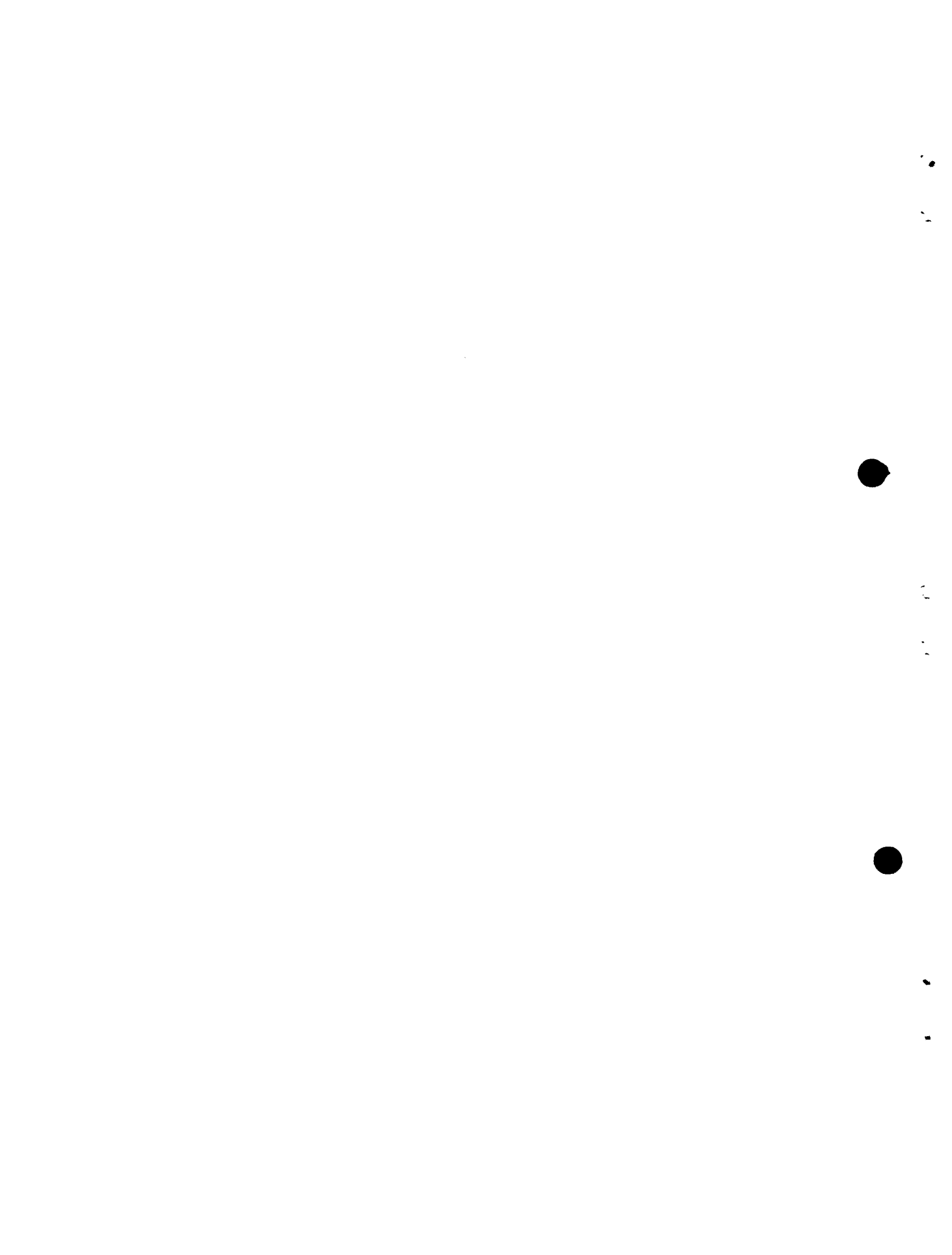


Ottawa Agreement ECCM goods received from these countries the same preferential treatment as imports from the U.K. It remains to be discussed the relation of the ECCM countries with those territories which - being colonies in 1932 - were not Parties to the Ottawa Agreement and which became independent since. Although the ECCM countries are not bound by a formal trade policy obligation to these Commonwealth Territories which were no active parties to the Ottawa Agreement, they grant to all of them preferential treatment. There will be many under them which could claim that they, true to the spirit of the Ottawa Agreement, reciprocate fully and give de facto preferential treatment to the ECCM area.

26. The trade relations with both these groups of countries - those formally entitled to preferential treatment under the Ottawa provisions and those not entitled - are very limited and the trade which exists (if any) flows almost exclusively in the direction of the ECCM. This could make it that the ECCM would be interested in revising its trade policy relations with these countries. It must be mentioned however, that a wide field has to be covered by the ECCM before it can decide on these questions, a fact which is taken into consideration in connection with the suggestions concerning the practical relation of the necessary trade policy action.

TRADE POLICY RELATION WITH THE NON-PREFERENTIAL AREA

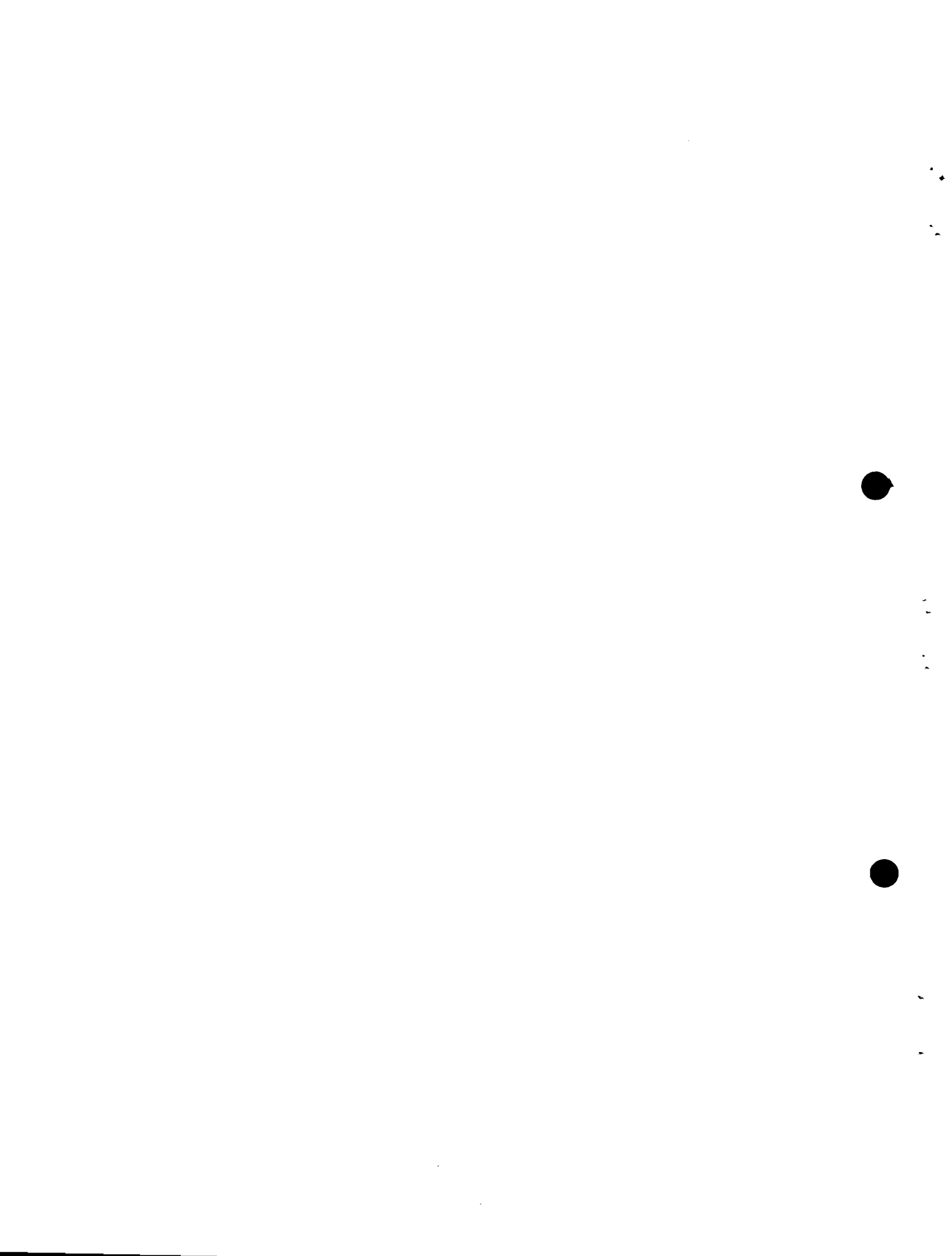
27. This Note up to this point almost exclusively deals with the relation of the ECCM countries with countries receiving preferential treatment, simply because, with the exception of the participation in GATT, practically no trade policy contacts outside the preferential arrangements existed. In the long run, however, trade policy relations on the basis of the most favoured nation treatment will become important. Although the area must be aware of this fact it must also be accepted that it may take some time before the necessity of such trade policy contacts will arise.



THE EECM TARIFF AND GATT

28. In introducing the considerations concerning the question how the GATT provisions affect the introduction of the EECM Tariff, attention must be drawn to the fact that the EECM (collectively, but also the EECM countries individually) may in its contacts with GATT meet with certain procedural difficulties. These difficulties, however, have nothing to do with the EECM Tariff but with the fact that the status of the EECM countries in GATT has not yet been adapted to their new political situation and that the formation of the EECM has not passed the GATT scrutiny which is a common procedure in the case of the creation of free trade areas and customs unions. In this connection, it must be recognised that in the interest of a harmonious economic development of the region, absolute priority must be given to the introduction of the EECM Tariff over any procedural or similar consideration. How strong this feeling influences the region may be seen from the fact that the EECM Agreement - the creation of which is affected by similar constitutional and procedural difficulties as the introduction of the EECM Tariff - has been enforced and operates so far simply by avoiding action in GATT. This statement should not pass, however, without the equally clear qualification that, with the necessary understanding and co-operation of all concerned, it should be possible without too great an effort to remove or to avoid these procedural obstacles.
29. In the discussion of the points relevant to this Note, namely the conformity of the EECM Tariff with the GATT provisions, the first question to be asked is, whether the EECM is bound in its free selection of duties, e.g. not to impose duties higher than those in force on a certain base date. In this connection it must be noted that GATT, against an often expressed but erroneous view, does not contain any provision which limits the right to increase duties. It operates in a different way. Countries can only become GATT members^{19/} after tariff negotiations. They are also later encouraged

^{19/} A provision which is practically suspended for developing countries to facilitate their access to GATT.

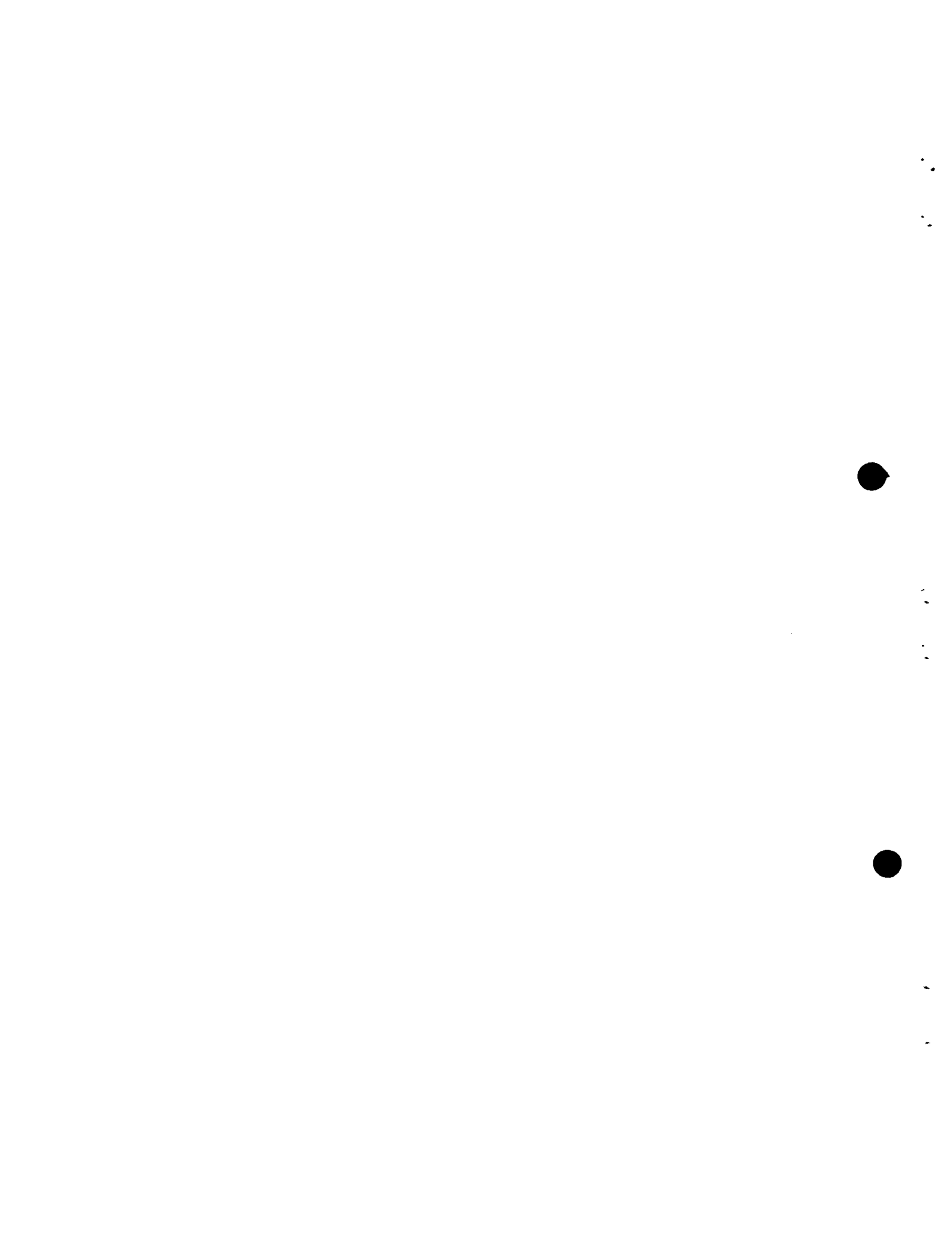


to reduce their rates in specific efforts the best known of which was the Kennedy Round. All tariff concessions (which, once accepted are listed in country Schedules) became after the negotiations a multilateral obligation amongst GATT members. These concessions are guaranteed by the GATT obligation imposed on its members not to increase the duties listed in the schedules beyond the negotiated rates. Such tariff concessions would also bind the ECCM territories if the U.K. had accepted - as she did for other dependencies - any such obligation on behalf of them. ^{19a/} It is therefore important to note that the ECCM countries consequently have full freedom to fix the duties in the new Common External Tariff according to their economic needs.

30. There is however, one other GATT provision related to duties which directly affects the ECCM tariff and indirectly limited the choice of duties, namely, the GATT obligation not to increase preferential margins ^{20/} which was drafted as a compromise solution between the wish of some countries to remove preferences fully and base the whole world trade on most favoured nation treatment, and the wish of other countries to have a free hand in negotiating preferential arrangements. This obligation which GATT originally interpreted very narrowly, is nowadays seen more in the light of the necessity of assisting developing countries in their economic development.
31. It has to be admitted in this connection, that in the case of a few items the new tariff leads to the increase of preferential margins. In any other environment even such a minor increase of a preferential margin would be considered a breach of the strict GATT obligation and would, to be tolerated, require a special permission called in the GATT jargon, a "waiver". It has been

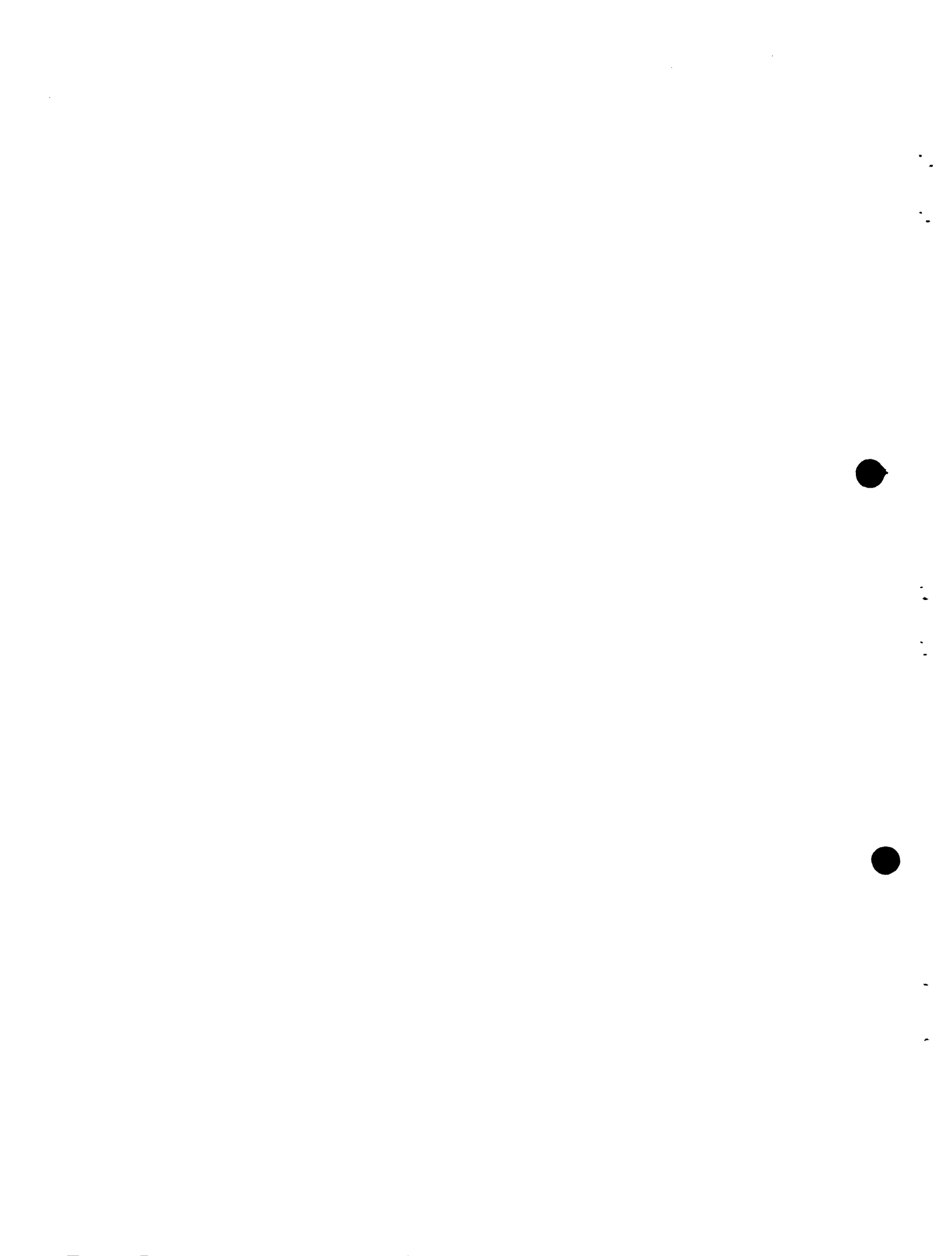
^{19a/} The correctness of this statement will be checked in December 1969 in GATT. If there should be concessions they would be minimal.

^{20/} This obligation explicitly refers to the "absolute" margin which ought not to be increased. (The obligations in the Ottawa Agreement which required preferential margins to be maintained is equally based on "absolute" margins. See paragraph 7 of this Note.)



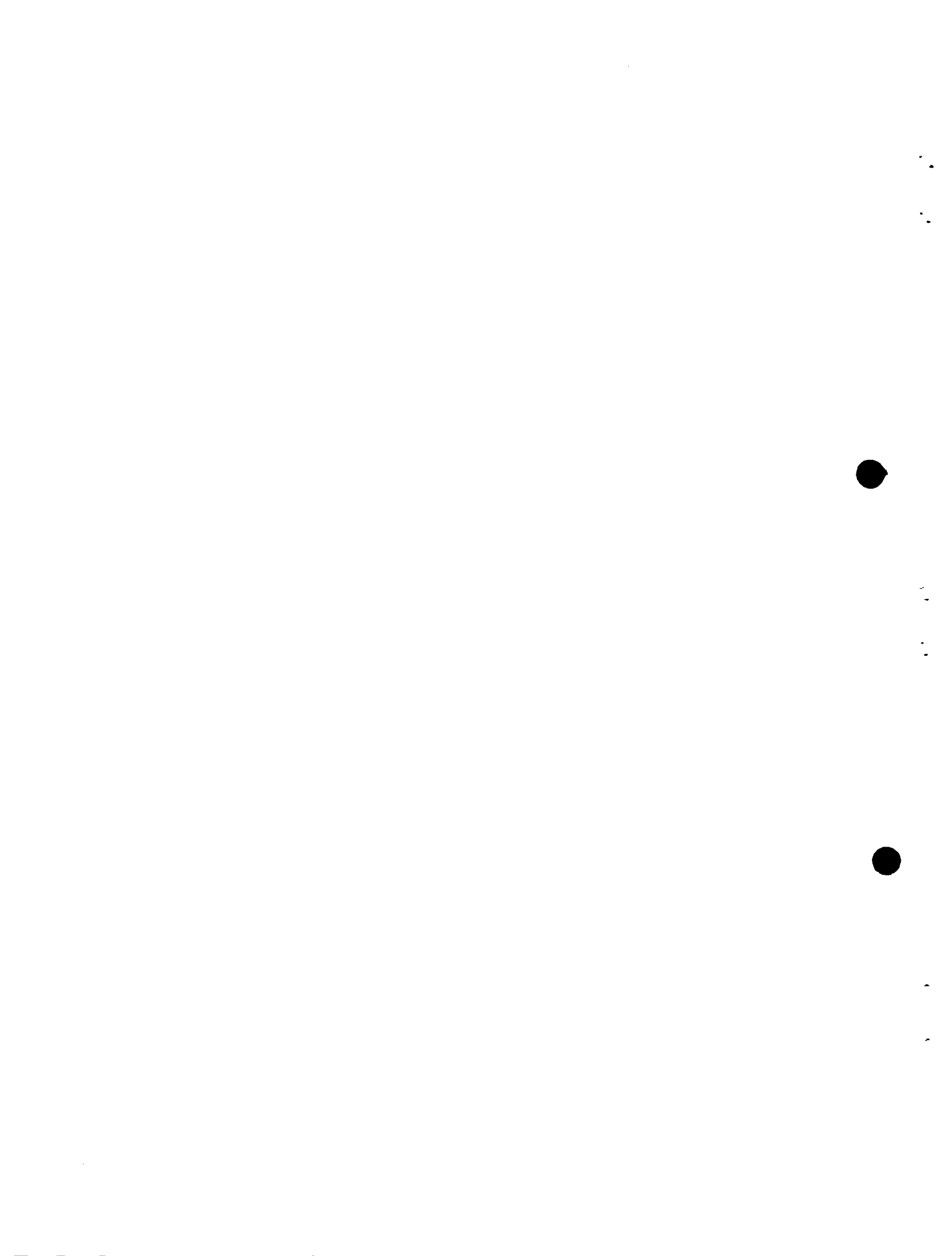
recognized by GATT, however, that increases of preferential margins which are the inevitable result of a tariff reform are not to be looked at as an isolated problem but are in conformity with GATT if "on the whole" - as in the case of the ECCM Tariff - the preferential rights have not been increased. ^{21/}

^{21/} The relevant precedent is the approval of the Contracting parties to GATT of the Report of a Working Party dealing with the Malawi tariff reform (early 1969).



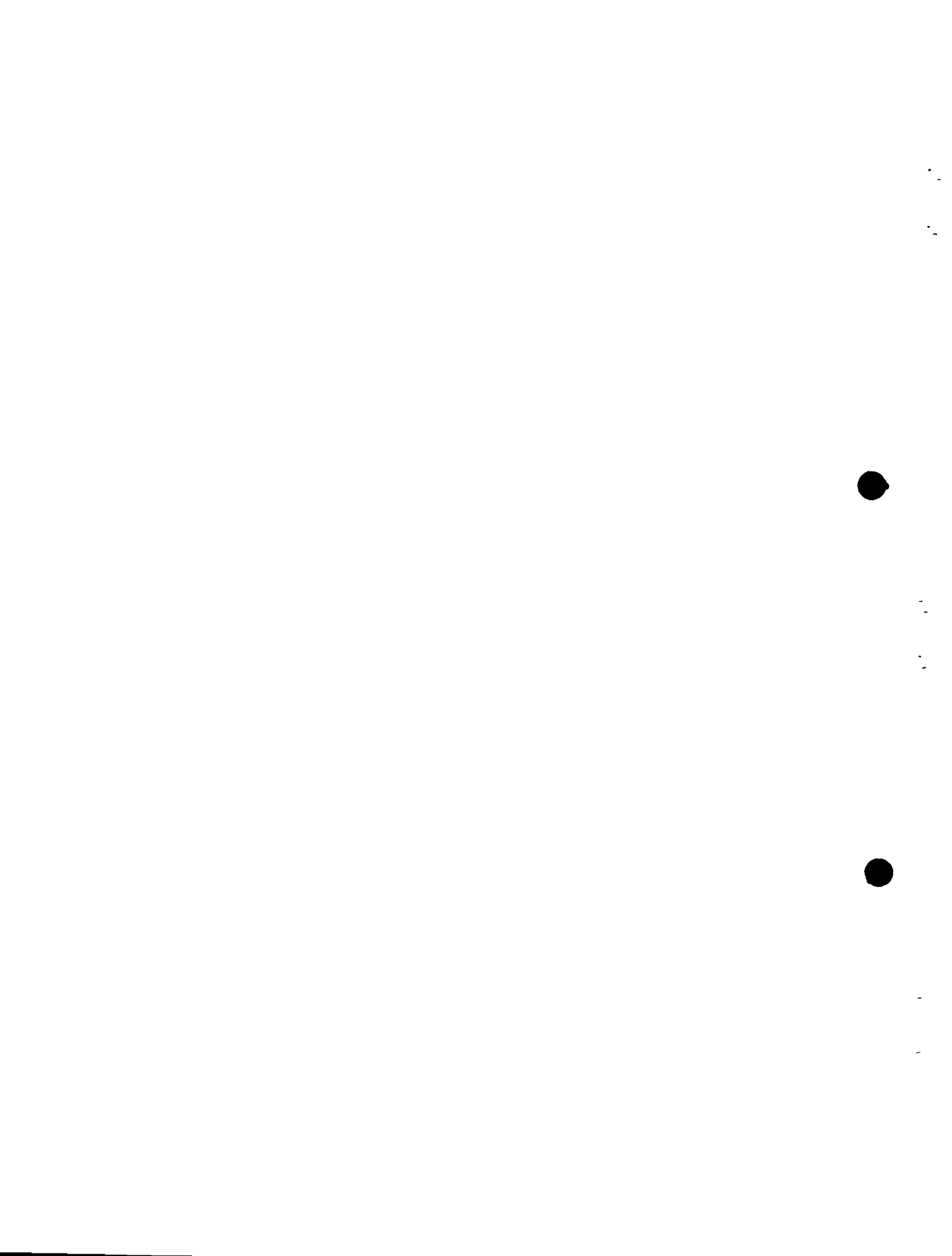
SUGGESTIONS CONCERNING THE INTERNATIONAL
INTRODUCTION OF THE ECCM TARIFF

32. The introduction of the ECCM Tariff touches in many ways on trade policy obligations. It is important that the countries which could claim trade policy rights are given a fair opportunity to reassure themselves that the ECCM Tariff does not violate their interests. If the preceding part of this Note was devoted to considerations concerning the trade policy relation of the ECCM with various countries and the efforts to establish the Common External Tariff in such a way as to be in conformity with all possible and justified wishes, it is the aim of this part of the Note to sketch a procedure which should facilitate a smooth international introduction of the ECCM Tariff.
33. The U.K. is the most important country in the Trade Policy relation of the ECCM. The main question in this connection is at what moment the ECCM Tariff would best be made available to the U.K. authorities. This could be done before its acceptance by the ECCM Council of Ministers or after its legal enforcement. Neither of the two solutions, it seems however, are satisfactory. To discuss the C.E.T. before its approval would certainly be premature as it cannot be foreseen whether the Council of Ministers will approve the new tariff, and even if the Council accepts the new tariff in principle, whether it will be accepted without changes. To present the new tariff to the U.K. after final approval by the Council of Ministers could, regardless of the effort to respect the U.K. interests, have unpleasant trade policy consequences if the U.K. would find fault with this procedure. To overcome this difficulty the following solution is



suggested; the Council of Ministers should - after having accepted that Tariff in principle - postpone its enforcement (e.g. for 3 months), and present the Tariff to the U.K. authorities with a view to obtain agreement to its enforcement.

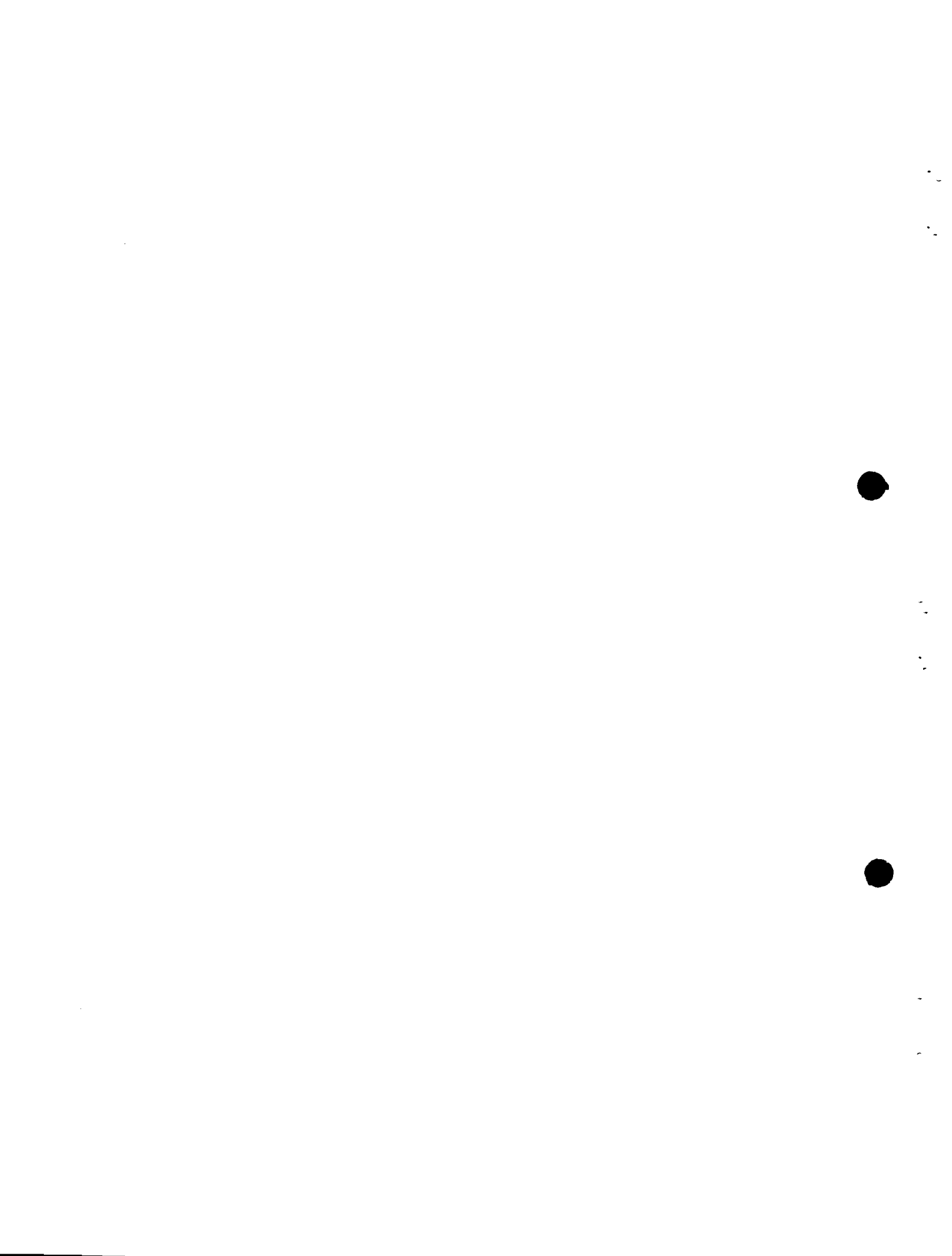
34. In the case of the relation with some of the other countries claiming preferential rights, it has been shown that some countries grant considerable rights to the ECCM area, while others grant hardly any. It is quite obvious that the ECCM countries will have the wish to re-negotiate or even terminate some of these relations. It should be stressed with all emphasis, however, that under no circumstances should this be done by unilateral action in that for example the applicability of the preferential rates would not be extended to such a country. Any such unilateral actions would inevitably cause in the long run unmeasurable damage to the ECCM countries themselves. The right way - and by no means complicated way - to achieve any change in trade policy relations is through negotiations. The only solution, to assure the continuity of the present situation and at the same time prepare for trade negotiations is to maintain for the interim period the present preferential situation and to grant the preferential rates contained in the new ECCM Tariff to all countries which always received preferential treatment. This system has the further invaluable advantage of not disturbing any future common CARIFTA action. It should also be added that there need not to be any fear that this would affect the customs revenue adversely, not only because it is a continuation of the present situation but mainly for the reason that the trade with countries, the ECCM may wish to discontinue eventually, preferential rights, is very small.



35. That means for the practical application that the ECCM countries, once the ECCM Tariff has been approved by the Council, would have to inform the relevant Commonwealth countries of the fact that this tariff, which will replace the present seven tariffs of the member countries of the ECCM, will become effective in the near future (e.g. on 1 March 1970), and that provisionally the rates contained in the preferential column apply to all Commonwealth countries. Together with this notification, the tables showing the relation of the average old preferential margins as compared with the new preferential margins ^{22/} could be sent to the countries so as to permit them to ascertain not only that their preferential rights have been maintained but also that the new rates have been introduced in conformity with the GATT obligations. The countries could also be informed that the ECCM countries intend to consolidate eventually their trade policy positions and to conclude new Trade Agreements to replace the out-dated present situation.
36. Regarding the question when GATT should be contacted to discuss the ECCM tariff, it seems right to say that even if time would permit such a contact before its approval by the ECCM Council of Ministers this does not seem possible. It should be suggested, even that the Tariff should be handed to GATT only after it became effective,

22/

See footnote of this Note.

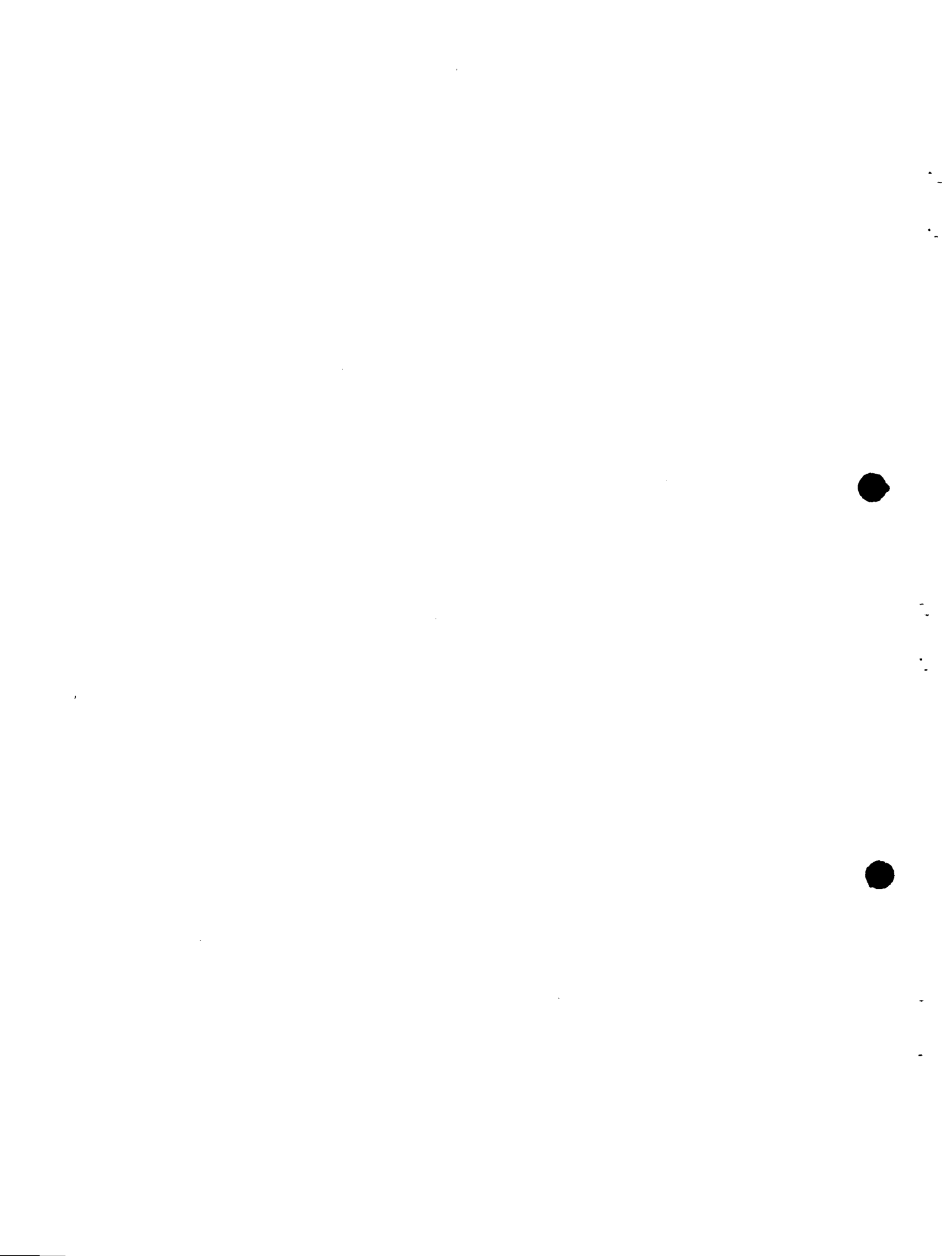


not only for the reason of courtesy towards the Commonwealth Countries but also for the reason that the contact with these countries could lead to changes of rates. In substance it can be expected that GATT will satisfy itself ^{23/} with this Notification which can be accompanied by full documentation proving that on the whole preferential rights have not been increased. ^{24/} Should GATT insist to convene a Working Party it can be assumed that under the existing circumstances it would be a pure formality.

37. The necessity that the ECCM countries take trade policy action will arise sooner or later. Be it that the U.K., or another Commonwealth Country or GATT wish to discuss questions related to the ECCM Tariff or to other trade policy questions affecting the region. It is therefore necessary that the ECCM prepares itself in time for such negotiations and takes the necessary measures to act efficiently as a trade policy unit. To ensure this, it is suggested that the Council of Ministers should authorize a body or institution to represent officially the member countries individually and the ECCM collectively in all trade policy actions. It is felt that if the ECCM Secretariat would probably be the best choice for that purpose, and that the trade policy functions should be entrusted to it, if this has not been done yet. Of course, internally every institution which represents the ECCM in trade policy matters would have to seek authorization from the member countries before taking a decision.

23/ See paragraph 26 of this Note.

24/ See footnote 1 of this Note.



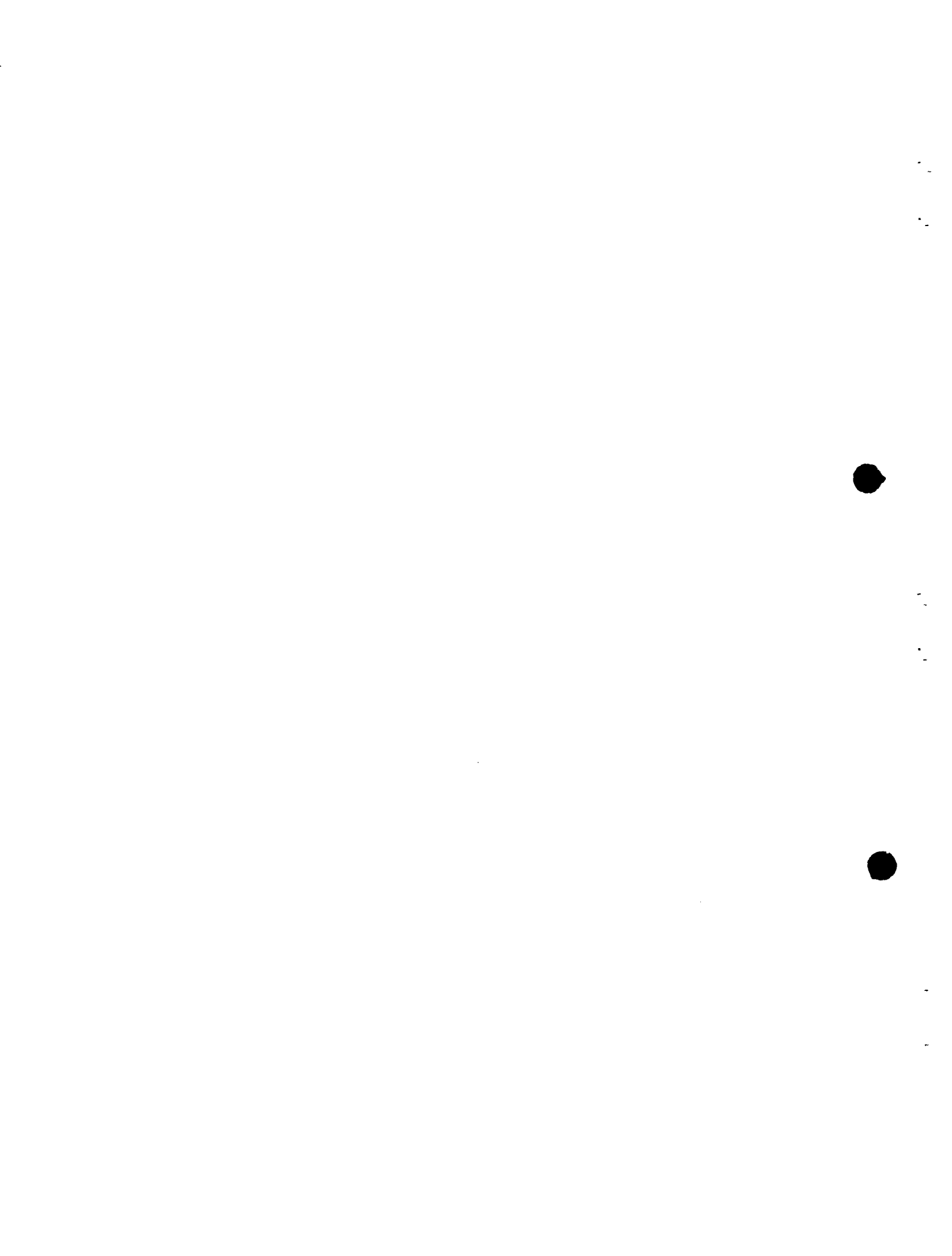
SUMMARY

38. The long and turbulent political and economic history of the region reflects itself in complicated, outdated and often difficult trade policy provisions. The main aim of this Note is not to describe this situation beyond the necessity of giving background information but to show a way to come to new and satisfactory trade policy relations.

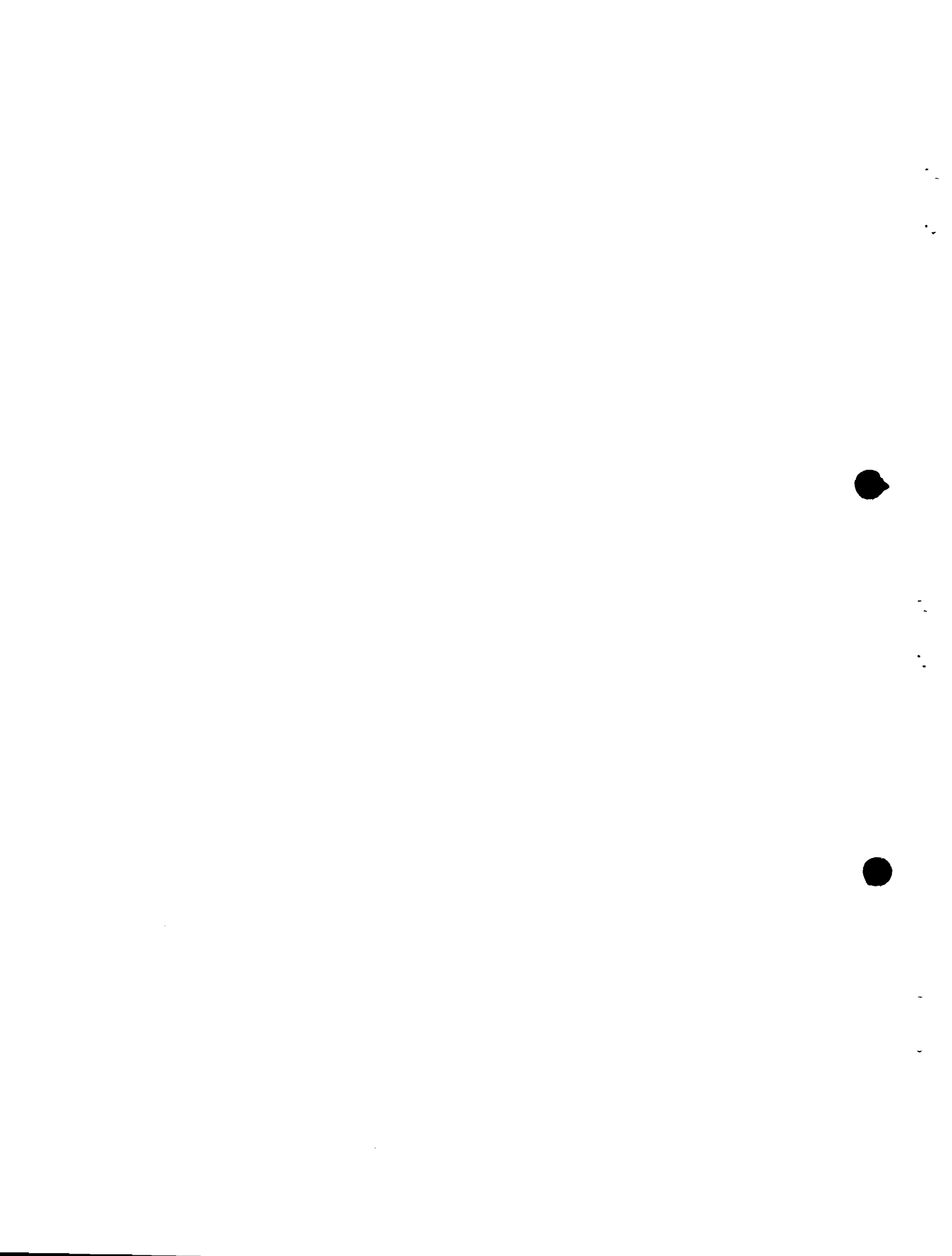
The main message which this Note wishes to convey in this connection may be summarized as follows:

- . the region can only represent its trade policy interests efficiently if it acts as a group. (Within the ECCM for the time being and within CARIFTA as soon as possible.)
- . it is possible to move from the present difficult and unclear trade policy relations to a clear and satisfactory trade policy situation; and finally
- . that this can be achieved not only without friction with Third Countries but also efficiently and fast.

39. Summing up the relevant procedural provisions it should be remarked that this cannot be made without explaining that they are the result of a careful consideration aimed at giving as many benefits to the ECCM area as possible, the most important of which may be listed in concluding this Note:



- . the procedure has all advantages of an unilateral action but remains strictly within any possible trade policy obligations.
- . it avoids any legal or other controversy and assures in friendship a continuity of the present trade policy relation.
- . although the Trade Policy Partners are given full opportunity to discuss any point before the ECCM Tariff will be enforced they can and probably will accept the Tariff without any action from their side due to the complete documentation which can be made available to them and which proves that the new tariff not only respects the bilateral but also the GATT obligation;
- . it gives the ECCM region the possibility to make it clear that it is the intention to terminate all unsatisfactory arrangements and to put eventually its trade policy relation on a new basis in conformity with its changes political and economic situation.
- . recognizes that any trade policy action ought to keep the door open for any future common CARIFTA trade policy.
- . and finally, and for the practical application most important, the suggested procedure is very simple in that it requires only one action on the side of the ECCM countries, namely, an appropriate Notification of the Commonwealth Countries and GATT.

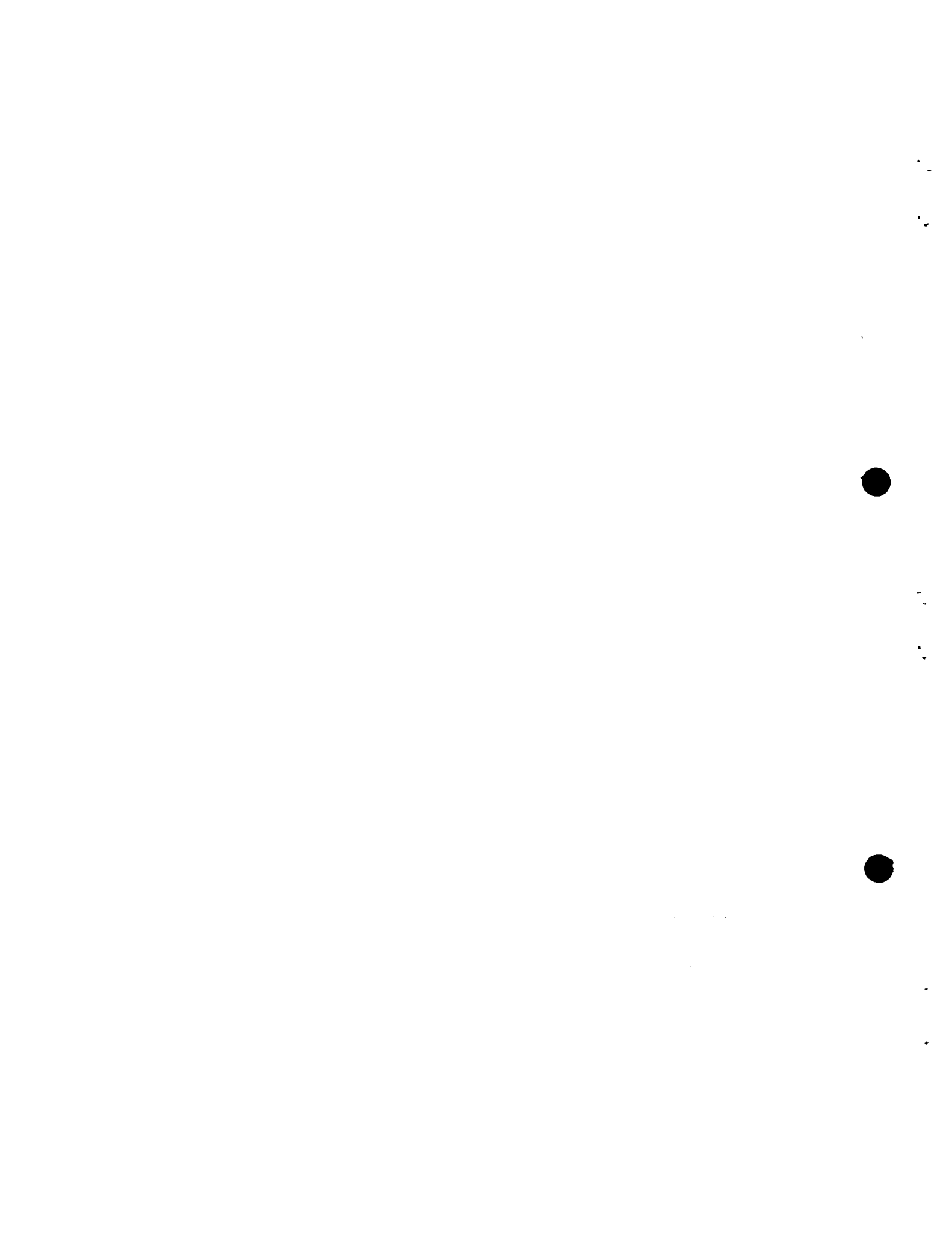


THE ECCM COMMON EXTERNAL TARIFF

Containing
a comparison of the average of the old
preferential margins with the new pref-
erential margins provided for the ECCM*

- This Annex was only attached to
the original copy of this Note -

* Using the SITC old (before the introduction of the
ECCM Tariff the Nomenclature used by most ECCM
countries).

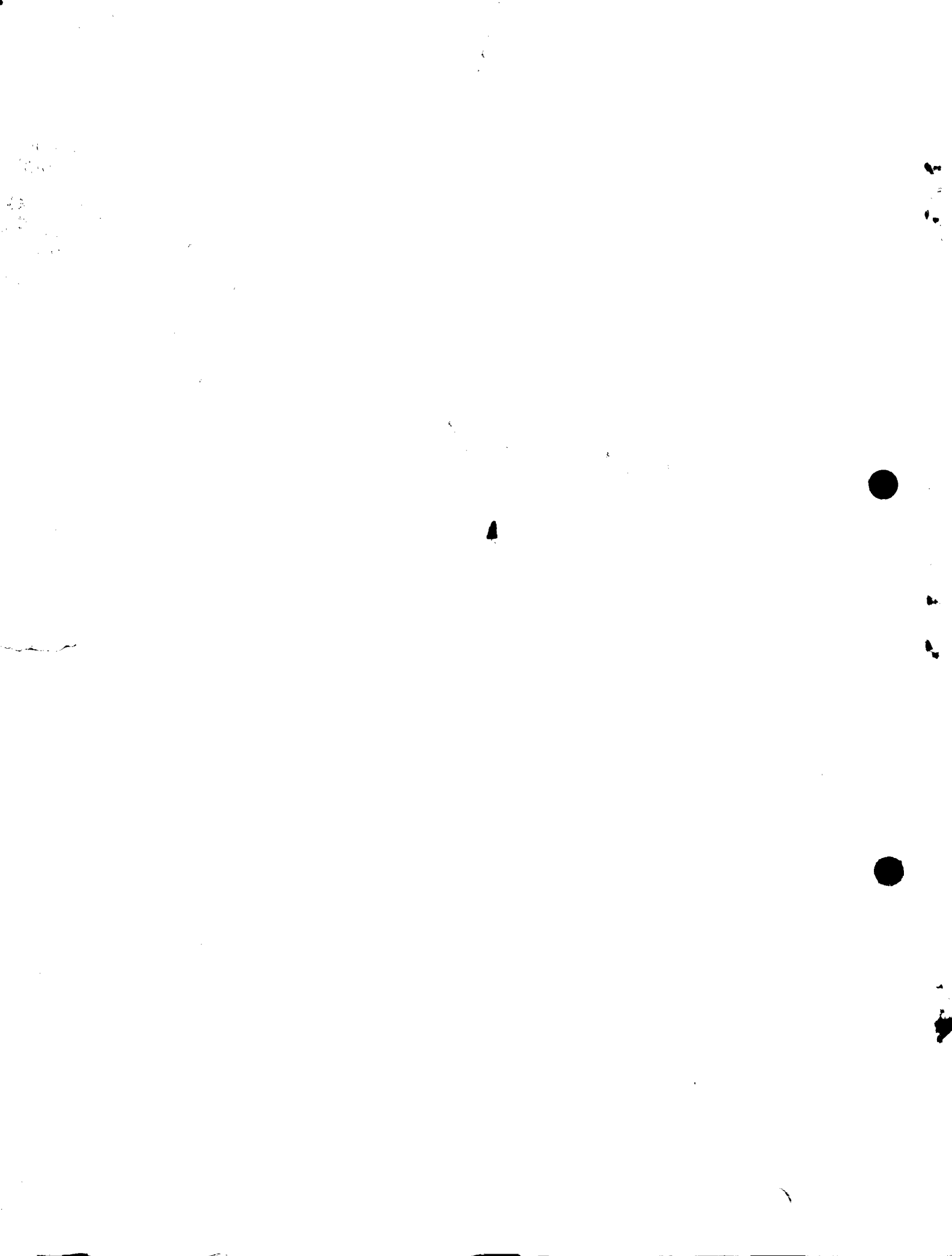


CONSIDERATIONS CONCERNING THE (MATERIAL)
RECIPROCITY IN THE CASE OF THE RELATION
ECCM -- CANADA

The importance of the trade of the CARIFTA Area with Canada may be seen from the fact that Canada is one of the most important buyers of ECCM goods. There seems, however, to be an imbalance of preferential advantages. See e.g. Article "West Indian Preferences to Canadian Exports" (Publication of the University of the West Indies, Jamaica "West Indies - Canada Economic Relations", page 49) mainly in two points. (1) 100% of the West Indian exports got preferential treatment, 95% from Canada in 1938, a figure which had shrunk to 52% already in 1956. No corresponding figure given for CARIFTA imports from Canada but it should still move around 90%. As a reason for this development is given Canada's shift to imports of bauxite and petroleum. (2) As a result of various multilateral Tariff Negotiations in GATT the preferential margins were reduced by Canada e.g. for the following products: raw cocoa, grapefruit, orange-juice, and abolished on Coffee.

To this can be added that Canada, since the Ottawa Protocol, no longer grants the important shipping facilities which were included in the 1925 Agreement.

* The considerations in this Annex are provisional and shall eventually be replaced by a table based on statistical figures.



UNITED KINGDOM-CANADIAN AGREEMENT
(Part of the Ottawa Agreement of 1932) */

WE, the representatives of His Majesty's Government in the United Kingdom and of His Majesty's Government in Canada hereby agree with one another, on behalf of our respective Governments, as follows:-

ARTICLE 1.

His Majesty's Government in the United Kingdom undertake that Orders shall be made in accordance with the provisions of Section 4 of the Import Duties Act, 1932, which will ensure the continuance after the 15th November, 1932, of entry free of duty into the United Kingdom of goods consigned from any part of the British Empire, and grown, produced or manufactured in Canada, which by virtue of that Act are now free of duty subject, however, to the reservations set forth in Schedule A appended hereto.

ARTICLE 2.

His Majesty's Government in the United Kingdom will invite Parliament to pass the legislation necessary to impose on the foreign goods specified in Schedule B appended hereto, the duties of customs shown in that Schedule in place of the duties (if any) now leviable.

ARTICLE 3.

His Majesty's Government in the United Kingdom undertake that the general ad valorem duty of 10 per cent. imposed by Section I of the Import Duties Act, 1932, on the foreign goods specified in Schedule C shall not be reduced except with the consent of His Majesty's Government in Canada.

ARTICLE 4.

It is agreed that the duty on either wheat in grain, copper, zinc or lead, as provided in this agreement, may be removed if at any time Empire producers of wheat in grain, copper, zinc and lead respectively are unable or unwilling to offer these commodities on first sale in the United Kingdom at prices not exceeding the world prices and in quantities sufficient to supply the requirements of the United Kingdom consumers.

*/ Schedules Annexed are not reproduced.



ARTICLE 5.

His Majesty's Government in the United Kingdom will invite Parliament to pass the legislation necessary to modify the conditions at present governing the importation into the United Kingdom of live cattle from Canada on the lines already agreed upon in principle between themselves and His Majesty's Government in Canada.

ARTICLE 6.

His Majesty's Government in the United Kingdom declare that it is their intention to arrange as soon as possible after receiving the report of the Commission now sitting on the reorganisation of the Pig Industry in the United Kingdom, for the quantitative regulation of the supplies of bacon and hams coming on to the United Kingdom market, and undertake that in any legislation which they may submit to Parliament for regulating the supplies of bacon and hams from all sources into the United Kingdom, provision will be made for free entry of Canadian bacon and hams of good quality up to a maximum of 2,500,000 cwt. per annum.

ARTICLE 7.

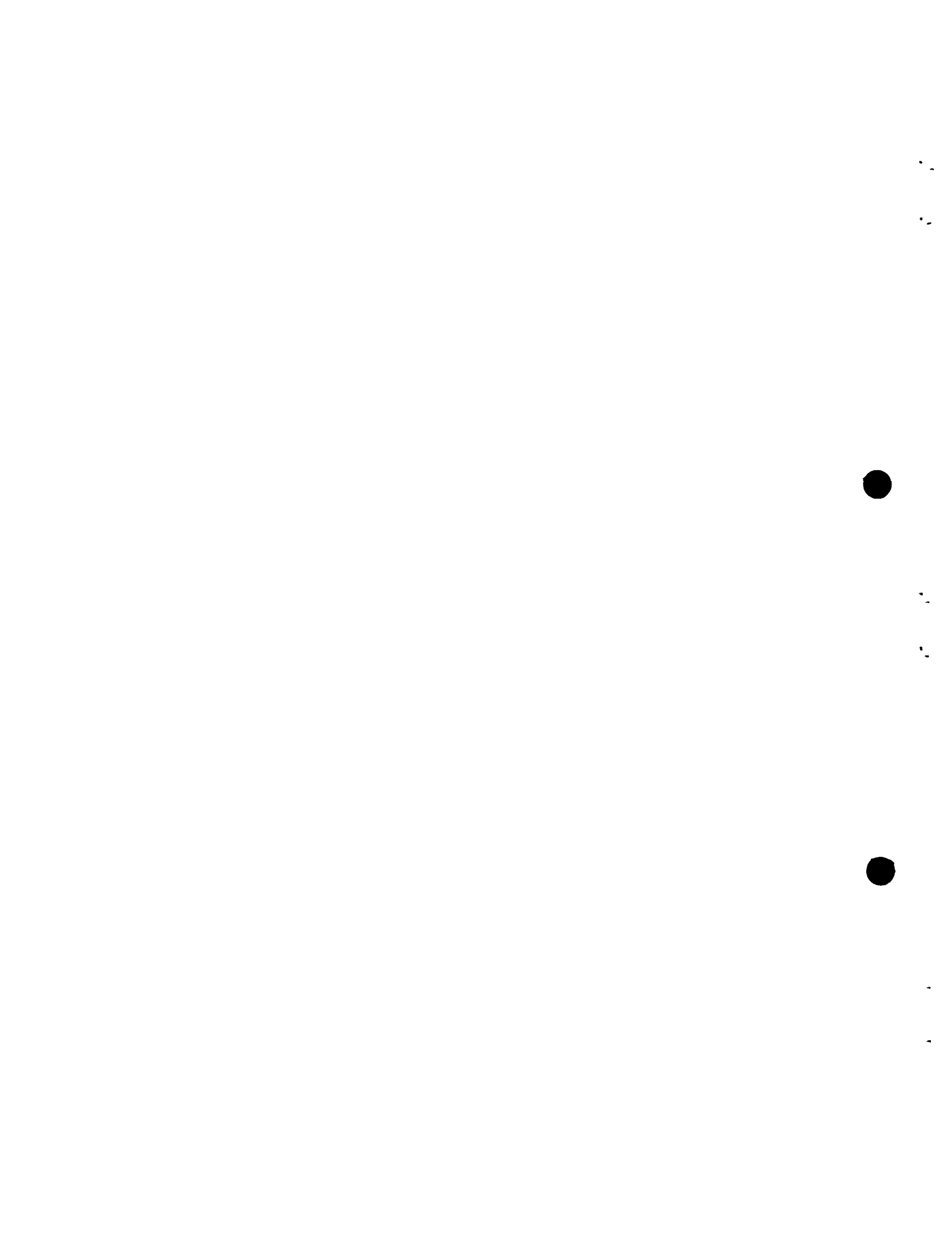
His Majesty's Government in the United Kingdom will invite Parliament to pass legislation which will secure for a period of ten years from the date hereof to tobacco consigned from any part of the British Empire and grown, produced or manufactured in Canada the existing margin of preference over foreign tobacco, so long, however, as the duty on foreign unmanufactured tobacco does not fall below 2s. 0½d. per lb., in which event the margin of preference shall be equal to the full duty.

ARTICLE 8.

His Majesty's Government in the United Kingdom will invite the Governments of the non-self-governing Colonies and Protectorates to accord to Canada any preference which may for the time being be accorded to any other part of the British Empire, provided that this Clause shall not extend to any preferences accorded by Northern Rhodesia to the Union of South Africa, Southern Rhodesia and the Territories of the South African High Commission by virtue of the Customs Agreement of 1939, and further will invite the Governments of the Colonies and Protectorates shown in Schedule D to accord to Canada new or additional preferences on the commodities and at the rates shown therein.

ARTICLE 9.

His Majesty's Government in Canada will invite Parliament to pass the legislation necessary to substitute for the duties of customs now leviable on the goods specified in Schedule E the duties shown in that Schedule



provided that nothing in this Article shall preclude His Majesty's Government in Canada from reducing the duties specified in the said Schedule so long as the margin of British preference shown in that Schedule is preserved or from increasing the rates under the intermediate or general tariff set out in the said Schedule.

ARTICLE 10.

His Majesty's Government in Canada undertake that protection by tariffs shall be afforded against United Kingdom products only to those industries which are reasonably assured of sound opportunities for success.

ARTICLE 11.

His Majesty's Government in Canada undertake that during the currency of this Agreement the tariff shall be based on the principle that protective duties shall not exceed such a level as will give United Kingdom producers full opportunity of reasonable competition on the basis of the relative cost of economical and efficient production, provided that in the application of such principle special consideration shall be given to the case of industries not fully established.

ARTICLE 12.

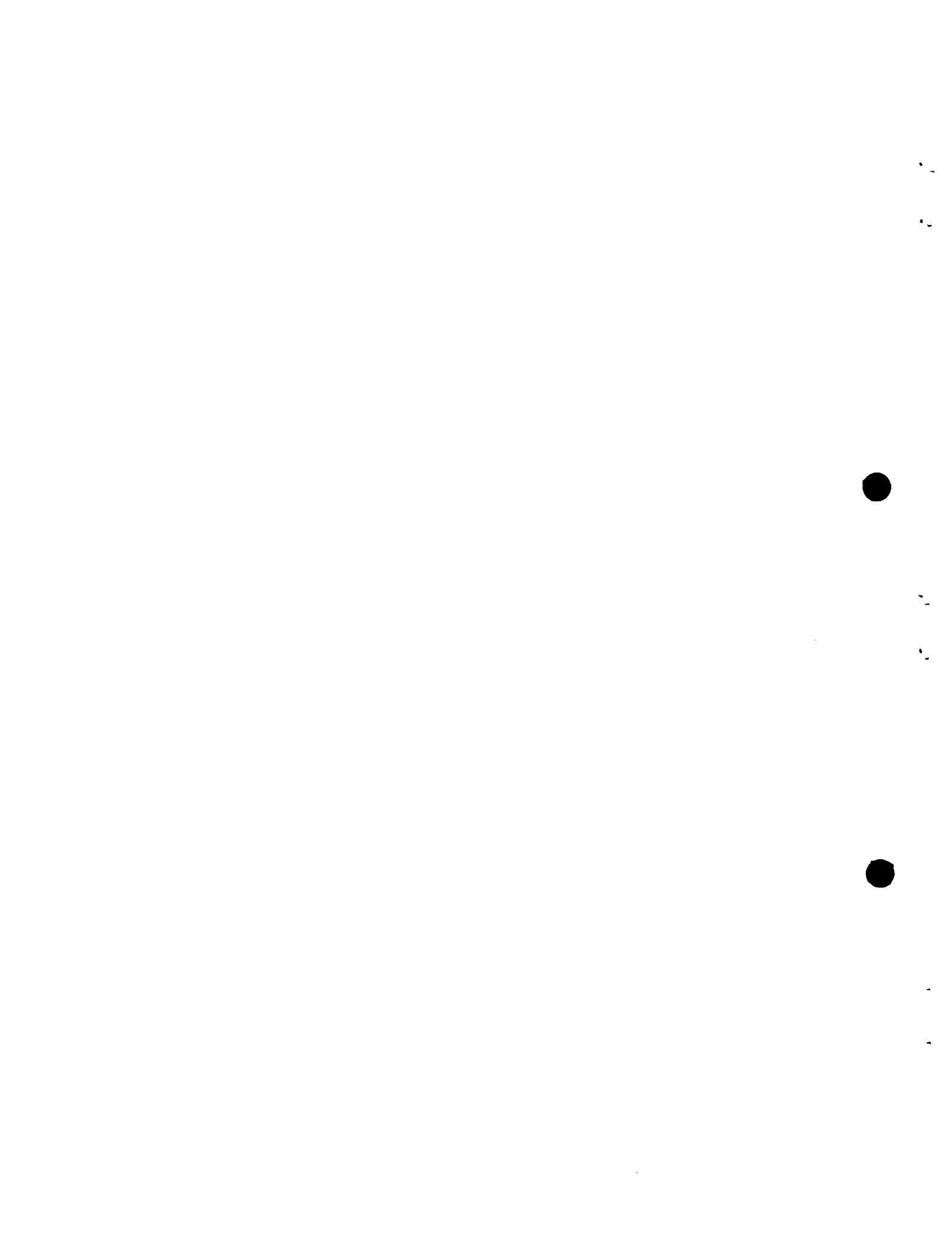
His Majesty's Government in Canada undertake forthwith to constitute the Tariff Board, for which provision is made in the Tariff Board Act, 1931.

ARTICLE 13.

His Majesty's Government in Canada undertake that on the request of His Majesty's Government in the United Kingdom they will cause a review to be made by the Tariff Board as soon as practicable of the duties charged on any commodities specified in such request in accordance with the principles laid down in Article 11 hereof, and that after the receipt of the Report of the Tariff Board thereon such report shall be laid before Parliament, and Parliament shall be invited to vary wherever necessary the Tariff on such commodities of United Kingdom origin in such manner as to give effect to such principles.

ARTICLE 14.

His Majesty's Government in Canada undertake that no existing duty shall be increased on United Kingdom goods except after an inquiry and the receipt of a report from the Tariff Board, and in accordance with the facts as found by that body.



ARTICLE 15.

His Majesty's Government in Canada undertake that United Kingdom producers shall be entitled to full rights of audience before the Tariff Board when it has under consideration matters arising under Articles 13 and 14 hereof.

ARTICLE 16.

His Majesty's Government in Canada undertake that Customs administration in Canada shall be governed by such general principles as will ensure (a) the avoidance, so far as reasonably possible, of uncertainty as to the amount of Customs duties and other fiscal imposts payable on the arrival of goods in Canada; (b) the reduction of delay and friction to a minimum; and (c) the provision of machinery for the prompt and impartial settlement of disputes in matters appertaining to the application of tariffs.

ARTICLE 17.

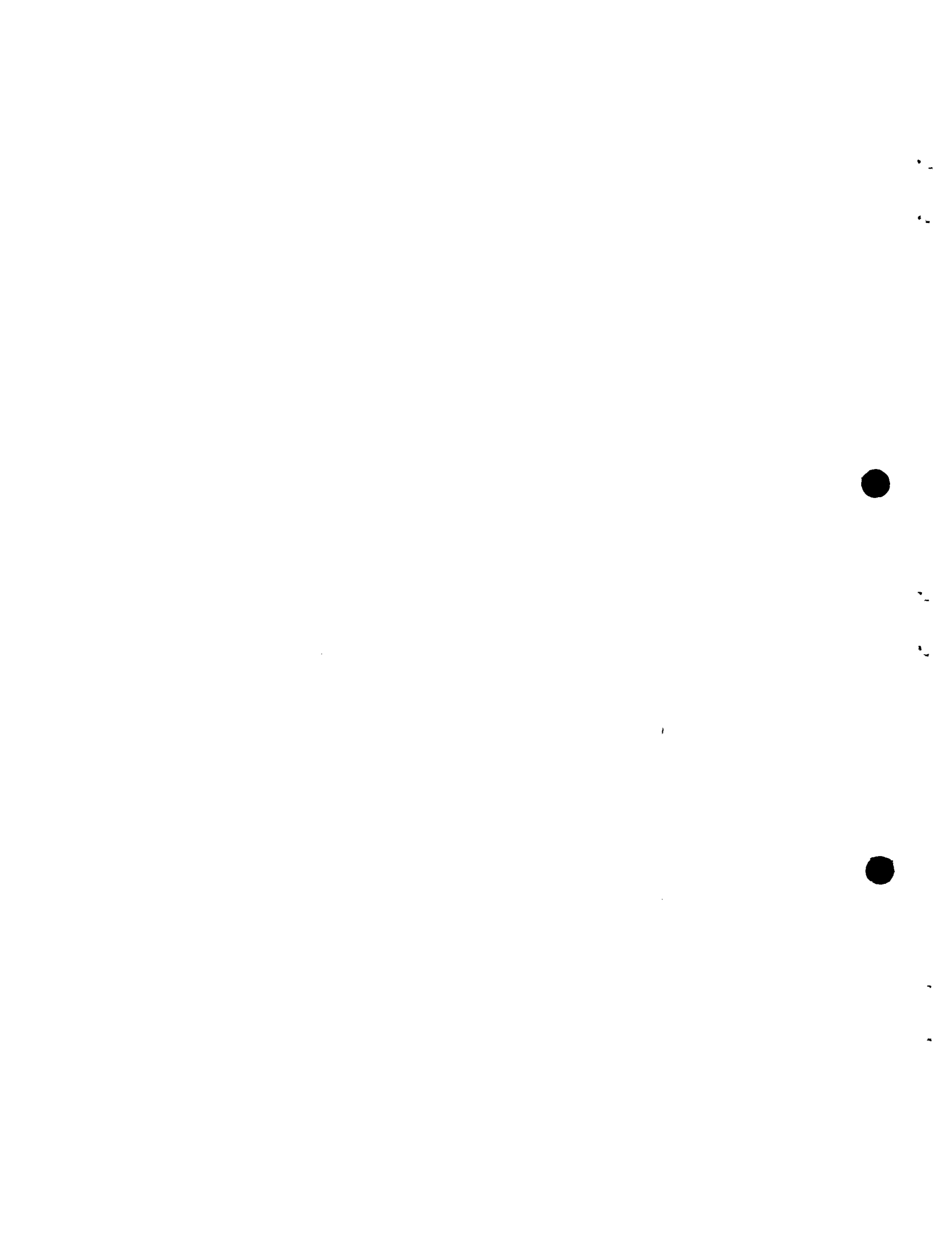
His Majesty's Government in Canada undertake that all existing surcharges on imports from the United Kingdom shall be completely abolished as soon as the finances of Canada will allow. They further undertake to give sympathetic consideration to the possibility of reducing and ultimately abolishing the exchange dumping duty in so far as it applies to imports from the United Kingdom.

ARTICLE 18.

His Majesty's Government in Canada undertake to modify the existing regulations governing the importation of pedigree stock from the United Kingdom into Canada in a manner already agreed upon in principle between themselves and His Majesty's Government in the United Kingdom.

ARTICLE 19.

His Majesty's Government in Canada undertake to accord to those non-self-governing Colonies, Protectorates and the Mandated Territories to which the benefits of the British preferential rates are at present accorded, and also to Zanzibar the preferences on the commodities and at the rates shown in Schedule F, and also any preferences for the time being accorded to the United Kingdom. Provided that His Majesty's Government in Canada shall not be bound to continue to accord any preferences to any Colony or Protectorate which, not being precluded by international obligations from according preferences, either (i) accords to Canada no preferences, or (ii) accords to some other part of the Empire (in the case of Northern Rhodesia, excepting the Union of South Africa, Southern Rhodesia and the Territories of the South African High Commission) preferences not accorded to Canada.



ARTICLE 20.

Nothing in this Agreement shall prejudice or diminish any of the benefits enjoyed by any of the parties thereto under the Canada-West Indies Trade Agreement dated the 6th July, 1925.

ARTICLE 21.

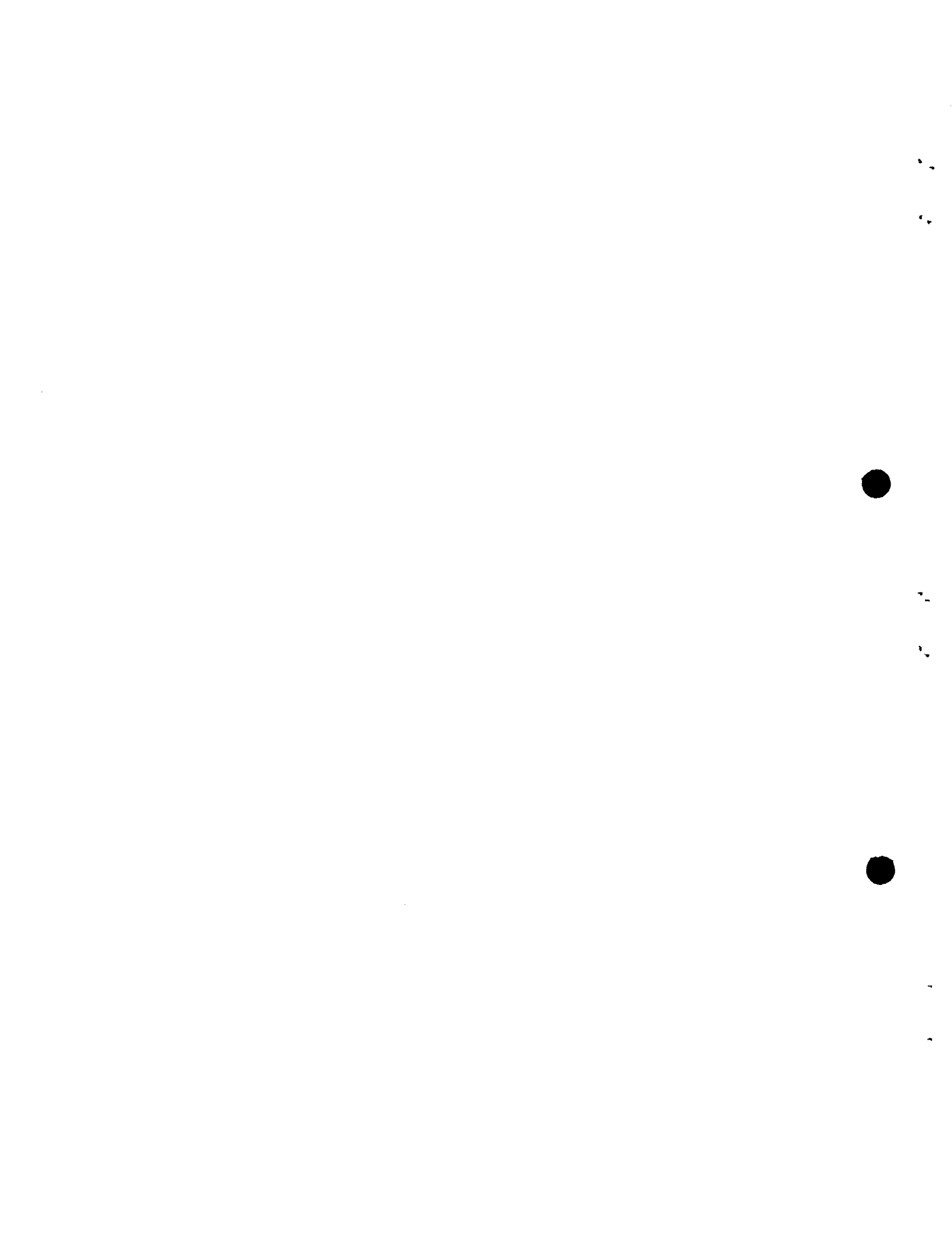
This Agreement is made on the express condition that, if either Government is satisfied that any preferences hereby granted in respect of any particular class of commodities are likely to be frustrated in whole or in part by reason of the creation or maintenance directly or indirectly of prices for such class of commodities through State action on the part of any foreign country, that Government hereby declares that it will exercise the powers which it now has or will hereafter take to prohibit the entry from such foreign country directly or indirectly of such commodities into its country for such time as may be necessary to make effective and to maintain the preferences hereby granted by it.

ARTICLE 22.

This Agreement between His Majesty's Government in the United Kingdom and His Majesty's Government in Canada is to be regarded as coming into effect as from the date hereof (subject to the necessary legislative or other action being taken as soon as may be practicable hereafter). It shall remain in force for a period of five years, and if not denounced six months before the end of that period shall continue in force thereafter until a date six months after notice of denunciation has been given by either party.

ARTICLE 23.

In the event of circumstances arising which, in the judgment of His Majesty's Government in the United Kingdom or of His Majesty's Government in Canada, as the case may be, necessitate a variation in the terms of the Agreement, the proposal to vary those terms shall form the subject of consultation between the two Governments.



SPECIAL PREFERENTIAL RIGHTS GRANTED IN THE
OTTAWA AGREEMENT BY THE U.K. ON BEHALF
OF THE LEEWARD AND WINDWARD ISLANDS)

(See paragraph 8 of this Note)

A U.K. - Canada Agreement

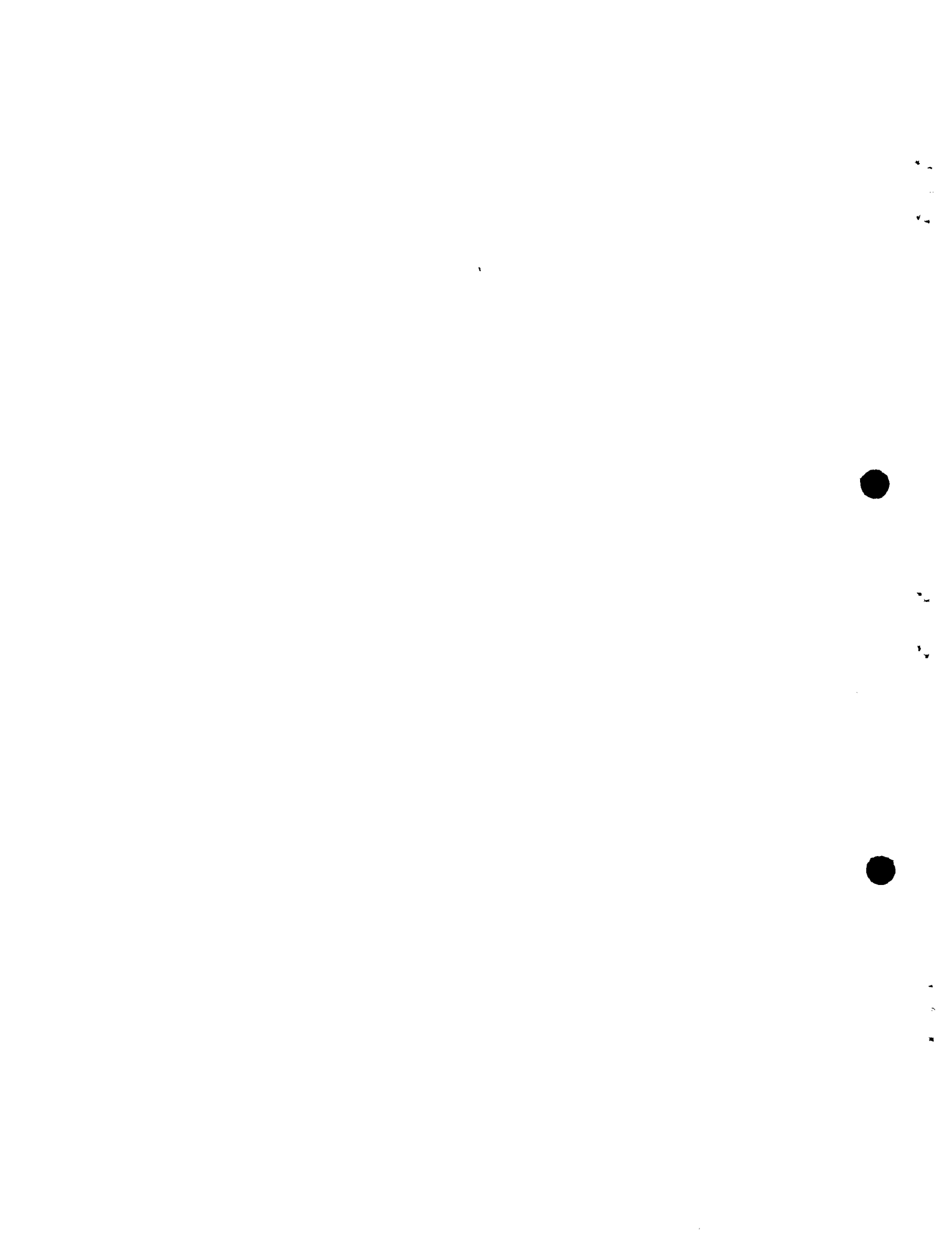
(Article 8 and C.A. Schedule D)

<u>Commodity</u>	<u>Margin of preference</u>
Rubber boots and shoes and canvas boots and shoes, rubber soled	1 s. per pair
Motor vehicles, parts and tyres	20%
Hosiery of cotton or artificial silk	6 d. per pair
Hosiery of silk	9 d. per pair
Butter	1½ d. per lb.
Pitch pine (Antigua, only)	10 sh. per 1000 ft. (on the basis of a general duty assimilated to the duty of other wood)

B U.K. - Australia Agreement

(Article 7 and ex Schedule E)

Butter	1½ d. per lb.
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ATTEMPT TO MEASURE THE (MATERIAL) RECIPROCITY
IN THE CASE OF THE RELATION
ECCM - U.K.^{*}

		<u>Preferential Advantages</u> (Million W.I. dollars)	
		<u>Received</u>	<u>Given</u>
<u>Sugar</u>	(Calculated scheme of Antigua 1.5% of the recently estimated total CARIFTA advantage of 50 million)	0.75	
<u>Bananas</u>	(half the advantage estimated for Jamaica in 1958.)	6.-	
<u>Other</u>	ECCM exports	?	
<u>Total</u>		7-8	
<u>Advantages presented to UK imports</u> (estimated on the basis of the calculated figure for St. Lucia)			6-7

* The table in this Annex is provisional and based on not comparable figures taken from various sources. It shall eventually be replaced by a table based on statistical figures.

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